

should be submitted on or before August 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92532; File Nos. SR-NYSE-2021-05, SR-NYSE-2021-01, SR-NYSE-2021-04, SR-NYSECHX-2021-01]

### Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE National, Inc.; NYSE American LLC; NYSE Chicago, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Each of the Exchange's Co-location Services and Fee Schedule To Add Two Partial Cabinet Solution Bundles

July 30, 2021.

On January 19, 2021, New York Stock Exchange LLC, NYSE National, Inc., NYSE American LLC, and NYSE Chicago, Inc. each filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend the each of the Exchanges' co-location rules to add two partial cabinet solution bundles.<sup>3</sup> The proposed rule changes were published for comment in the **Federal Register** on February 5, 2021.<sup>4</sup> On March 18, 2021, the Commission extended the time period within which to approve each of the proposed rule changes, disapprove the

proposed rule changes, or institute proceedings to determine whether to approve or disapprove the proposed rule changes, to May 6, 2021.<sup>5</sup> On May 6, 2021, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> The Commission received a comment letter on the proposal from the Exchanges.<sup>7</sup>

Section 19(b)(2) of the Act<sup>8</sup> provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule changes were published for comment in the **Federal Register** on February 5, 2021.<sup>9</sup> The 180th day after publication of the Notices is August 4, 2021. The Commission is extending the time period for approving or disapproving the proposal for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule changes along with the comment received. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> designates October 3, 2021 as the date

<sup>5</sup> See Securities Exchange Act Release Nos. 91357, 86 FR 15732 (March 24, 2021) (SR-NYSE-2021-05); 91363, 86 FR 15763 (March 24, 2021) (SR-NYSE-2021-01); 91358, 86 FR 15732 (March 24, 2021) (SR-NYSE-2021-04); 91362, 86 FR 15765 (March 24, 2021) (SR-NYSECHX-2021-01).

<sup>6</sup> See Securities Exchange Act Release No. 91785 (May 6, 2021), 86 FR 26082 (May 12, 2021) (SR-NYSE-2021-05, SR-NYSE-2021-01, SR-NYSE-2021-07, SR-NYSE-2021-04, NYSECHX-2021-01).

<sup>7</sup> See, respectively, letter dated July 6, 2021 from Elizabeth K. King, Chief Regulatory Officer, ICE, General Counsel and Corporate Secretary, NYSE to Vanessa Countryman, Secretary, Commission. All comments received by the Commission on the proposed rule change are available on the Commission's website at: <https://www.sec.gov/comments/sr-nyse-2021-05/srnyse202105.htm>. NYSE filed comment letters on behalf of all of the Exchanges.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> See *supra* note 4.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

by which the Commission should either approve or disapprove the proposed rule change (File Nos. SR-NYSE-2021-05, SR-NYSE-2021-01, SR-NYSE-2021-04, NYSECHX-2021-01).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92533; File No. SR-NASDAQ-2021-059]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 4 Listing Rules

July 30, 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 July 20, 2021, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend The Nasdaq Options Market LLC ("NOM") Rules at Options 2, Section 5, Market Maker Quotations; Options 4, Options Listing Rules; and Options 4A, Section 12, Terms of Index Options Contracts. This proposal also creates a new Options 4C entitled "U.S. Dollar-Settled Foreign Currency Options." Finally, the Exchange proposes to reserve some sections with the Equity Rules and correct a cross-reference within Options 2, Section 4, Obligations of Market Makers.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

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

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

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

<sup>3</sup> The New York Stock Exchange LLC, NYSE National, Inc., NYSE Arca, Inc., NYSE American LLC, and NYSE Chicago, Inc. are collectively referred to herein as "NYSE" or the "Exchanges."

<sup>4</sup> See Securities Exchange Act Release No. 91034 (February 1, 2021), 86 FR 8443 (SR-NYSE-2021-05); 91037 (February 1, 2021), 86 FR 8424 (SR-NYSE-2021-01); 91035 (February 1, 2021), 86 FR 8449 (SR-NYSE-2021-04); 91036 (February 1, 2021), 86 FR 8440 (SR-NYSECHX-2021-01).

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/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 Options 4, Options Listing Rules, to conform NOM's Options 4 Listing Rules to Nasdaq ISE, LLC's ("ISE") Options 4 Listing Rules. The Exchange also proposes to amend NOM Options 4A, Section 12, Terms of Index Options Contracts and create a new NOM Options 4C entitled "U.S. Dollar-Settled Foreign Currency Options" and adopt U.S. Dollar-Settled Foreign Currency Options rules similar to Nasdaq Phlx LLC's ("Phlx") rules at Options 4C. Also, the Exchange also proposes to amend Options 2, Section 5, Market Maker Quotations to relocate rule text concerning bid/ask differentials for long-term options contracts from NOM Options 4 and Options 4A, similar to ISE. Finally, the Exchange proposes to correct a cross-reference within Options 2, Section 4, Obligations of Market Makers. Each rule change is described below.

#### Options 4, Options Listing Rules

Conforming NOM's Options 4 Listing Rules to that of ISE Options 4 is part of the Exchange's continued effort to promote efficiency in the manner in which it administers its rules. The Exchange proposes to amend these rules to conform to ISE Options 4 Rules.

The Exchange proposes a universal technical amendment which impacts Options 4, Sections 1 through 4, 6, 7, 8 and 10. The Exchange proposes to relocate a "." at the end of the terms "Section," where applicable, throughout Options 4 to the end of the proceeding

number within Options 4, Sections 1 through 4, 6, 7, 8 and 10.

#### Section 1. Designation of Securities

The Exchange proposes to replace the current rule text of Options 4, Section 1 which states,

Securities traded on the Exchange are options contracts, each of which is designated by reference to the issuer of the underlying security or name of underlying foreign currency, expiration month or expiration date, exercise price and type (put or call).

with the following rule text,

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).

The Exchange proposes to amend this sentence within Options 4, Section 1 to conform to ISE Options 4, Section 1. The revised wording does not substantively amend the paragraph.

#### Section 2. Rights and Obligations of Holders and Writers

The Exchange proposes to replace the current rule text of Options 4, Section 1 which states,

Subject to the provisions of this Chapter, 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 forth in the Rules of the Clearing Corporation.

with the following rule text,

The rights and obligations of holders and writers shall be as set forth in the Rules of the Clearing Corporation.

The Exchange proposes to amend this sentence within Options 4, Section 2 to conform to ISE Options 4, Section 1. The revised wording does not substantively amend the paragraph.

#### Section 3. Criteria for Underlying Securities

Options 4, Section 3 of the Options Listing Rules is being updated to conform to ISE Options 4, Section 3.

The Exchange proposes to amend Options 4, Section 3(a)(i) and (ii) to conform to ISE Options 4, Section 3(a)(1) and (2) by changing the "i. and ii." to "(1) and (2)," respectively. Also, the Exchange proposes to remove the phrase "with the SEC" within current NOM Options 4, Section 3(a)(i). These amendments are non-substantive.

The Exchange proposes to amend Options 4, Section 3(b) to reword the rule text to ISE Options 4, Section 3(b). The Exchange proposes to replace the current rule text of Options 4, Section 3(b) which states,

In addition, the Exchange shall from time to time establish standards to be considered

in evaluating potential underlying securities for the Exchange options transactions. There are many relevant factors which must be considered in arriving at such a determination, and the fact that a particular security may meet the standards established by the Exchange does not necessarily mean that it will be selected as an underlying security. The Exchange may give consideration to maintaining diversity among various industries and issuers in selecting underlying securities. Notwithstanding the foregoing, an underlying security will not be selected unless:

with the following rule text,

In addition, the Exchange shall from time to time establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions. There are many relevant factors which must be considered in arriving at such a determination, and the fact that a particular security may meet the guidelines established by the Exchange does not necessarily mean that it will be selected as an underlying security. Further, in exceptional circumstances an underlying security may be selected by the Exchange even though it does not meet all of the guidelines. The Exchange may also give consideration to maintaining diversity among various industries and issuers in selecting underlying securities. Notwithstanding the foregoing, however absent exceptional circumstances, an underlying security will not be selected unless:

The new rule text permits the Exchange, in exceptional circumstances, to select an underlying security even though it does not meet all of the guidelines. Today, the Exchange may establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions. Providing NOM with the same ability to select an underlying security even though it does not meet all of the guidelines as ISE will permit NOM to list similar options as ISE for competitive purposes. The proposal to replace the term "standards" with "guidelines" within paragraph 3(b) is non-substantive.

The Exchange is amending numbering within Options 4, Section 3(b) as well as removing extraneous rule text within current Options 4, Section 3(b)(iii), namely "or Rules thereunder." The Exchange proposes to relocate Options 4, Section 3(k) into new Options 4, Section 3(b)(6) without change. This would align NOM Options 4, Section 3(b)(6) with ISE Options 4, Section 3(b)(6). This provision states,

Notwithstanding the requirements set forth in Paragraphs 1, 2, 4 and 5 above, the Exchange may list and trade an options contract if (i) the underlying security meets the guidelines for continued approval in Options 4, Section 4; and (ii) options on such underlying security are traded on at least one other registered national securities exchange.

The Exchange proposes to renumber NOM Options 4, Section 3(c) and make minor amendments to rule text within current Options 4, Section 3(c)(ii), (iii), (iv) and (v), Sections 3(d), 3(f) and 3(g) to conform the rule text to ISE Options 4, Section 3(c)(ii), (iii), (iv) and (v), Sections 3(d), 3(f) and 3(g). The proposed changes are non-substantive.<sup>3</sup>

The Exchange proposes to amend an “up” to “on” within NOM Options 4, Section 3(d). This proposed change is non-substantive.

The Exchange proposes non-substantive amendments to amend NOM Options 4, Section 3(f) and (g)<sup>4</sup> in addition to conforming the numbering to ISE Options 4, Section 3(f) and (g) numbering.

The Exchange proposes to relocate rule text currently within NOM Options 4, Section 3(h), which describes a market information sharing agreement, to proposed NOM Options 4, Section 3(i) without change. This rule text is currently located within ISE rules at Options 4, Section 3(i).

Current NOM Options 4, Section 3(i) is being re-lettered as proposed Options 4, Section 3(h). The Exchange proposes to add the defined term “Financial Instruments” within Options 4, Section 3(h) and also account for money market instruments, U.S. government securities and repurchase agreements, defined by the term “Money Market Instruments” similar to ISE Options 4, Section 3(h). The addition of money market instruments, U.S. government securities and repurchase agreements as securities deemed appropriate for options trading will make clear that these agreements are included in the acceptable securities. The Exchange notes that this rule text is clarifying in nature and will more explicitly provide for money market instruments, U.S. government securities and repurchase agreements as a separate category from what is being defined as “Financial Instruments” with this proposal. Today, these instruments are eligible as securities deemed appropriate for options trading. The remainder of the changes are non-substantive in nature and simply conform the location of words similar to ISE.<sup>5</sup> The Exchange also proposes to

remove the following products from Options 4, Section 3(h): The ETFS Silver Trust, the ETFS Palladium Trust, the ETFS Platinum Trust or the Sprott Physical Gold Trust. The Exchange no longer lists these products and proposes to remove them the products from its listing rules. The Exchange will file a proposal with the Commission if it determines to list these products in the future. Finally, the Exchange proposes to amend Options 4, Section 3(h) by removing the rule text at the end of the paragraph which provides, “all of the following conditions are met.” Paragraph (h) would simply end with “provided that:” and direct market participants to subparagraphs (1) and (2).

The Exchange proposes to capitalize “the” at the beginning of Options 4, Section 3(h)(1) and remove “; and” at the end of the paragraph and instead at a period so that subparagraphs (1) and (2) are not linked, but rather read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares. Similar to ISE Options 4, Section 3(h)(2), the Exchange proposes to clarify that Options 4, Section 3(h)(2) applies to only international or global Exchange-Traded Fund Shares. Specifically, the Exchange proposes to amend Options 4, Section 3(h)(2) to provide, “Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, shall meet the following criteria.” ISE Options 4, Section 3(h) has the identical text. Proposed Options 4, Sections 3(h) generally concerns securities deemed appropriate for options trading. The proposed new rule text adds language stating that subparagraph (h)(2) of Options 4, Section 3 applies to the extent the Exchange-Traded Fund Share is based on international or global indexes, or portfolios that include non-U.S. securities. This language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index.

The Exchange proposes to amend Options 4, Section 3(h)(2)(A) to remove the phrase “for series of portfolio depositary receipts and index fund shares based on international or global indexes,”. Today, Options 4, Section

text applies to Exchange-Traded Fund shares. Also the word “indexes” is being changes to “indices” within this paragraph and “similar entity” is being relocated within the paragraph.

3(h), subparagraphs (h)(1)<sup>6</sup> and (h)(v)<sup>7</sup> permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component based requirements in subparagraphs (h)(2)(B)–(D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1). The identical rule text exists within ISE Options 4, Section 3(h)(2)(A).

The Exchange also proposes to amend the term “comprehensive surveillance agreement” within Options 4, Section 3(h)(2) (A)–(D) to instead provide “comprehensive surveillance sharing agreement.” This amendment will bring greater clarity to the term. Further, the Exchange proposes to add the phrase “if not available or applicable, the Exchange-Traded Fund’s” within Options 4, Section 3(h)(2)(B), (C), and (D) 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

<sup>6</sup> Subsection (h)(i) concerns passive Exchange-Traded Fund Shares. Subsection (h)(1) provides, “represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments, including, but not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the “Financial Instruments”), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the “Money Market Instruments”) comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments).”

<sup>7</sup> Subsection (h)(v) concerns active Exchange-Traded Fund Shares. Subsection (h)(v) Provides, “represents an interest in a registered investment company (“Investment Company”) organized as an open-end management company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (“NAV”), and when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (“Managed Fund Share”).”

<sup>3</sup> The proposed changes replace the word “standards” with “guidelines,” insert “Options 4” before “Section 3,” and remove 2 extraneous uses of “this.” Similar replacements are made throughout current Options 4, Section 3(c), including amending a capitalized “Paragraph.”

<sup>4</sup> The proposed changes replace the word “standards” with “guidelines,” insert “Rule” instead of “Section 3,” and remove an unnecessary “or.”

<sup>5</sup> The amendment to current Options 4, Section 3(i)(B)(4) to add, “. . . which the Exchange-Traded Fund shares are based . . .” makes clear that this

instead. The Exchange notes that “not available” is intended for cases where the Exchange does not have access to the index components, in those cases the Exchange would look to the portfolio components. The term “not applicable” is intended if the fund is active and does not track an index and only the portfolio is available. These amendments will conform the rule text to ISE Options 4, Section 3(h)(2)(A)–(D).

The Exchange also proposes to wordsmith Options 4, Section 3(h)(2)(B) to amend the phrase to provide, “any non-U.S. component securities of an index on which the Exchange-Traded Fund Shares are based or if not available or applicable, the Exchange-Traded Fund’s portfolio of securities that are not subject to comprehensive surveillance sharing agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio;”. Finally, the Exchange proposes to wordsmith Options 4, Section 3(h)(2)(C) and (D) to relocate the phrase “on which the Exchange-Traded Fund Shares are based” and add “or portfolio” to bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B). The Exchange believes that the revised wording will bring greater clarity to the rule text and conform the rule text to ISE Options 4, Section 3(h)(2)(B)–(D). The Exchange proposes a non-substantive technical amendment to Options 4, Section 3(C)(2)(A)(ii) to correct a typographical error by changing a “than” to a “that.” The Exchange proposes a non-substantive technical amendment to Options 4, Section 3(h)(1) to change “In” to “in.”

As noted above NOM Options 4, Section 3(h), which describes a market information sharing agreement, was proposed to be relocated to Options 4, Section 3(i), similar to ISE Options 4, Section 3(i).

The Exchange proposes to amend Options 4, Section 3(j) to conform the rule text to ISE Options 4, Section 3(j). The proposed changes are non-substantive.<sup>8</sup>

As noted, above, Options 4, Section 3(k) was proposed to be relocated to new Options 4, Section 3(b)(6).

The Exchange proposes to remove the header “Index-Linked Securities” within Options 4, Section 3(l), and re-letter Options 4, Section 3(l)(i) as Section 3(k). Proposed Options 4, Section 3(k) has non-substantive numbering and citation amendments.

<sup>8</sup> The amendment to current Options 4, Section 3(j) replace the word “standards” with “guidelines.”

Options 4, Section 3(m) is being relocated into new Options 4C, Section 3 without change. Options 4C is specific to U.S. Dollar-Settled Foreign Currency Options.

#### Section 4. Withdrawal of Approval of Underlying Securities

The Exchange proposes to remove the first sentence of Options 4, Section 4(a), which provides, “If put or call options contracts with respect to an underlying security are approved for listing and trading on the Exchange, such approval shall continue in effect until such approval is affirmatively withdrawn by the Exchange.” This sentence is unnecessary as the second sentence within Options 4, Section 4(a) makes clear that approval continues until it does not meet the requirements. Also, the Exchange proposes to add the following text to the end of this paragraph: “When all options contracts with respect to any underlying security that is no longer approved have expired, the Exchange may make application to the SEC to strike from trading and listing all such options contracts.” This text makes clear that options contracts that are no longer approved will not be listed. The remainder of the changes to Options 4, Section 4(a) are non-substantive. This proposal is intended to conform NOM’s Options 4, Section 4(a) with ISE Options 4, Section 4(a).

The Exchange proposes to amend Options 4, Section 4(b) to add “Absent exceptional circumstances . . .” at the beginning of the section. This phrase adds clarity to the rule text. The remainder of the numbering changes as well as capitalization are non-substantive and intended to conform NOM’s Options 4, Section 4(b) with ISE Options 4, Section 4(b). The Exchange also proposes to remove reserved sections.

Options 4, Section 4(c), which is currently reserved, is proposed to be deleted and current Options 4, Section 4(d) is proposed to be re-lettered as “c”. Minor non-substantive conforming changes are proposed to current Options 4, Section 4(d)–(f).<sup>9</sup>

The Exchange proposes to amend current Options 4, Section 4(h) to re-letter it “g” and replace “security” with “Exchange-Traded Fund Shares” similar to ISE Options 4, Section 4(g). The Exchange proposes to add halt or suspension as other circumstances in which the Exchange shall not open for trading any additional series of option

<sup>9</sup> The Exchange proposes to remove “Section 4”, lowercase the term “Customer,” add “options 4” and remove “thereof” within Options 4, Section 4(d)–(f).

contracts of the class to clarify that this scenario may also exist. The other proposed changes to current Options 4, Section 4(h) are non-substantive.<sup>10</sup>

The Exchange proposes to amend current Options 4, Section 4(i) to re-letter it “h” and add “Absent exceptional circumstances, securities . . .” at the beginning of the section. This phrase adds clarity to the rule text. The remainder of the numbering changes are non-substantive<sup>11</sup> and conform current NOM’s Options 4, Section 4(i) with ISE Options 4, Section 4(h).

The Exchange proposes to adopt new Options 4, Section 4(i) similar to ISE, Options 4, Section 4(i). The proposed new section would provide,

For Holding Company Depository Receipts (HOLDRs), the Exchange will not open additional series of options overlying HOLDRs (without prior Commission approval) if:

- (1) The proportion of securities underlying standardized equity options to all securities held in a HOLDRs trust is less than 80% (as measured by their relative weightings in the HOLDRs trust); or
- (2) less than 80% of the total number of securities held in a HOLDRs trust underlie standardized equity options.

Current Options 4, Section 4 does not describe the withdrawal of HOLDRs. This new text, similar to ISE, would provide for provisions wherein the Exchange will not open additional series of options overlying HOLDRs.

The Exchange proposes to delete current Options 4, Section 4(j), which is reserved, as well as the lettering for Options 4, Section 4(k) which states, “Index Linked Securities.” The next existing paragraph is proposed to be Options 4, Section 4(j). The remainder of the numbering changes to this section are non-substantive and conform proposed Options 4, Section 4(j) with ISE Options 4, Section 4(j).

The Exchange proposes to remove Options 4, Section 4(l) related to inadequate volume delisting. To remain competitive with other options markets, the Exchange proposes to adopt the same obligations for continuance of trading.<sup>12</sup> Also, pursuant to proposed

<sup>10</sup> The Exchange proposes to amend Options 4, Section 4(h) to add “Options 4” and replace “Section 4” with “Rule;” and replace an “or” with an “and.”

<sup>11</sup> The term Options 4 is being relocated within the proposed new paragraph (h). Also, the term “Rule” is being used within proposed new paragraph (h)(1) instead of “Section 4,” and “Section 3.” “Upon annual review” is being removed from proposed new paragraph (h)(2).

<sup>12</sup> Options 4, Section 4(b), as amended, establishes requirements for continued listing, similar to ISE. See proposed Phlx Options 3, Section 4(b) which provides, “Absent exceptional circumstances, an underlying security will not be

new Options 4, Section 5(e) the Exchange will announce securities that have been withdrawn. 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>13</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 NOM’s requirements are different from other options markets. To remain competitive the Exchange proposes to adopt the same standards as ISE so that it may list options similar to 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 and Cboe. The Exchange today provides notification of a delisting to all Participants 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 reference to Options 4, Section 4(m) is proposed to be deleted. The provision that is currently Options 4, Section 4(m) is proposed to become Supplementary Material .01 to Options 4, Section 6 with a minor non-

deemed to meet the Exchange’s requirements for continued approval whenever any of the following occur: (1) There are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under Section 16(a) of the Exchange Act. (2) There are fewer than 1,600 holders of the underlying security. (3) The trading volume (in all markets in which the underlying security is traded) has been less than 1,800,000 shares in the preceding twelve (12) months. (4) The underlying security ceases to be an “NMS stock” as defined in Rule 600 of Regulation NMS under the Exchange Act. (5) If an underlying security is approved for options listing and trading under the provisions of Options 4, Section 3(c), the trading volume of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructure Security (as therein defined), including “when-issued” trading, may be taken into account in determining whether the trading volume requirement of (3) of this paragraph (b) is satisfied.”

<sup>13</sup> See ISE Options 4, Section 4 and Cboe Rule 4.4.

substantive change to the current rule text to capitalize “rules.”

#### Section 5. Series of Options Contracts Open for Trading

The Exchange proposes to update citations within Options 4, Section 5 to reflect the replacement of current rule text. These changes are non-substantive.

#### Section 7. Adjustments

The Exchange proposes non-substantive amendments to Options 4, Section 7. The current text states,

Options contracts shall be subject to adjustments in accordance with the Rules of the Clearing Corporation. The Exchange will announce adjustments, and such changes will be effective for all subsequent transactions in that series at the time specified in the announcement.

The Exchange proposes to instead provide,

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.

The proposal conforms NOM Options 4, Section 7 with ISE Options 4, Section 7.

#### Section 8. Long-Term Options Contracts

The Exchange proposes to conform NOM Options 4, Section 8 to ISE Options 4, Section 8. The proposed changes are non-substantive. NOM’s current rule text provides that with respect to long-term options series, bid/ask differential rules do not apply. The Exchange proposes to add this rule text to Options 4, Section 5(d)(2) within new subsection “A” as the bid/ask differential requirements can be found within this rule. The Exchange also proposes to add a new sentence to Options 4, Section 8(a) to refer to Options 4, Section 5(d)(2)(A), which states, “Bid/ask differentials for long-term options contracts are specified within Options 3, Section 5(d)(2)(A)” for ease of reference in locating all bid/ask requirements.

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

The Exchange proposes to relocate current Options 4, Section 9, U.S. Dollar-Settled Foreign Currency Option Closing Settlement Value to Options 4C, Section 6 with minor changes to add new lettering.

The Exchange proposes to adopt a new Section 9, titled “Limitation on the Liability of Index Licensors for Options on Fund Shares” identical to ISE

Options 4, Section 9. ISE and Cboe have similar provisions.<sup>14</sup> The new rule would provide,

(a) The term “index licensor” as used in this Rule refers to 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)).

(b) 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 shall 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 hereby disclaims all warranties of 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 shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person’s use of such index 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 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) provides that no index licensor with

<sup>14</sup> See Securities Exchange Act Release No. 45817 (April 24, 2002), 67 FR 21785 (May 1, 2002) (SR-CBOE-2002-19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Amend Its Rules Relating to the Limitation of Liability for Index Licensors) and 14729 (March 19, 2003), 68 FR 14729 (March 26, 2003) (SR-ISE-2003-09) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Relating to Limiting the Liability of Index Licensors for Options on Fund Shares).

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 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.

#### Section 10. Back-Up Trading Arrangements

The Exchange proposes to add a new rule to Options 4, Section 10, titled "Back-Up Trading Arrangements." Section 10 is currently reserved.<sup>15</sup> This proposed rule is identical to ISE Options 4, Section 10. This rule would permit NOM to enter into arrangements with one or more other exchanges (each a "Back-up Exchange") to permit NOM and its Participants to use a portion of a Back-up Exchange's facilities to conduct the trading of NOM exclusively listed options in the event of a Disabling Event, and permits NOM to provide trading facilities at NOM for another

exchange's exclusively listed options if that exchange (a "Disabled Exchange") is prevented from trading due to a Disabling Event. Also, the proposed rule would permit NOM to enter into arrangements with a Back-up Exchange to provide for the listing and trading of NOM singly listed options by the Back-up Exchange if NOM's facility becomes disabled, and conversely provide for the listing and trading by NOM of the singly listed options of a Disabled Exchange.

The back-up trading arrangements contemplated by Options 4, Section 10 would ensure that NOM's exclusively listed and singly listed options will have a trading venue if a catastrophe renders its primary facility inaccessible or inoperable.

Section 10(a) describes the back-up trading arrangements that would apply if NOM were the Disabled Exchange. An "exclusively listed option" is defined within Section 10(a)(1)(i) to mean an option that is listed exclusively by an exchange (because the exchange has an exclusive license to use, or has proprietary rights in, the interest underlying the option). Proposed paragraph(a)(1)(ii) provides that the facility of the Back-up Exchange used by NOM to trade some or all of NOM's exclusively listed options will be deemed to be a facility of NOM, and such option classes shall trade as listings of NOM. Since the trading of NOM exclusively listed options will be conducted using the systems of the Back-up Exchange, proposed paragraph (a)(1)(iii) provides that the trading of NOM listed options on NOM's facility at the Back-up Exchange shall be conducted in accordance with the rules of the Back-up Exchange, and proposed paragraph (a)(1)(iv) provides that the Back-up Exchange has agreed to perform the related regulatory functions with respect to such trading, in each case except as NOM and the Back-up Exchange may specifically agree otherwise. The Back-up Exchange rules that govern trading on NOM's facility at the Back-up Exchange shall be deemed to be NOM rules for purposes of such trading. Proposed paragraph (a)(1)(v) provides that NOM shall have the right to designate its members that will be authorized to trade NOM exclusively listed options on NOM's facility at the Back-up Exchange and, if applicable, its member(s) that will be a NOM Market Maker in those options.<sup>16</sup> If the Back-up Exchange is unable to accommodate all NOM Participants that desire to trade on NOM's facility at the Back-up Exchange, NOM may determine which Participants

shall be eligible to trade at that facility by considering factors such as whether the Participant is a NOM Market Maker in the applicable product(s), the number of contracts traded by the member in the applicable product(s), market performance, and other factors relating to a member's contribution to the market in the applicable product(s). Under proposed paragraph (a)(1)(vi), Participants of the Back-up Exchange shall not be authorized to trade in any NOM exclusively listed options, except that (i) NOM may deputize willing brokers of the Back-up Exchange as temporary NOM Participants to permit them to execute orders as brokers in NOM exclusively listed options traded on NOM's facility at the Back-up Exchange, and (ii) the Back-up Exchange has agreed that it will, at the instruction of NOM, select members of the Back-up Exchange that are willing to be deputized by NOM as temporary NOM Participants authorized to trade NOM exclusively listed options on NOM's facility at the Back-up Exchange for such period of time following a Disabling Event as NOM determines to be appropriate, and NOM may deputize such members of the Back-up Exchange as temporary NOM Participants for that purpose.

The foregoing exceptions would permit members of the Back-up Exchange to trade NOM exclusively listed options on NOM's facility on the Back-up Exchange, if, for example, circumstances surrounding a Disabling Event result in NOM Participants being delayed in connecting to the Back-up Exchange in time for prompt resumption of trading. Options 4, Section 10(a)(2) of the proposed rule provides for the continued trading of NOM singly listed options at the Back-up Exchange in the event of a Disabling Event at NOM. Proposed paragraph (a)(2)(ii) provides that NOM may enter into arrangements with a Back-up Exchange under which the Back-up Exchange will agree, in the event of a Disabling Event, to list for trading option classes that are then singly listed only by NOM. Such option classes would trade on the Back-up Exchange as listings of the Back-up Exchange and in accordance with the rules of the Back-up Exchange. Under proposed paragraph (a)(2)(iii), any such options class listed by the Back-up Exchange that does not satisfy the standard listing and maintenance criteria of the Back-up Exchange will be subject, upon listing by the Back-up Exchange, to delisting (and, thus, restrictions on opening new series, and engaging in opening transactions in those series with open

<sup>15</sup> See Securities Exchange Act Release No. 71092 (December 17, 2013), 78 FR 77510 (December 23, 2013) (SR-ISE-2013-61) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Back-Up Trading Arrangements).

<sup>16</sup> Of note, unlike Phlx, NOM does not have rules to appoint Lead Market Makers.

interest, as may be provided in the rules of the Back-up Exchange). NOM singly listed option classes would be traded by members of the Back-up Exchange and by NOM Participants selected by NOM to the extent the Back-up Exchange can accommodate NOM Participants in the capacity of temporary members of the Back-up Exchange. If the Back-up Exchange is unable to accommodate all NOM Participants that desire to trade NOM singly listed options at the Back-up Exchange, NOM may determine which Participants shall be eligible to trade such options at the Back-up Exchange by considering the same factors used to determine which NOM Participants are eligible to trade NOM exclusively listed options at NOM's facility at the Back-up Exchange. Proposed Section (a)(3) provides that NOM may enter into arrangements with a Back-up Exchange to permit NOM Participants to conduct trading on a Back-up Exchange of some or all of NOM's multiply listed options in the event of a Disabling Event. While continued trading of multiply listed options upon the occurrence of a Disabling Event is not likely to be as great a concern as the continued trading of exclusively and singly listed options, NOM nonetheless believes a provision for multiply listed options should be included in the rule so that the exchanges involved will have the option to permit members of the Disabled Exchange to trade multiply listed options on the Back-up Exchange. Such options shall trade as a listing of the Back-up Exchange in accordance with the rules of the Back-up Exchange.

Options 4, Section 10(b) describes the back-up trading arrangements that would apply if NOM were the Back-up Exchange. In general, the provisions in Section (b) are the converse of the provisions in Section (a). With respect to the exclusively listed options of the Disabled Exchange, the facility of NOM used by the Disabled Exchange to trade some or all of the Disabled Exchange's exclusively listed options will be deemed to be a facility of the Disabled Exchange, and such option classes shall trade as listings of the Disabled Exchange. Trading of the Disabled Exchange's exclusively listed options on the Disabled Exchange's facility at NOM shall be conducted in accordance with NOM rules, and NOM will perform the related regulatory functions with respect to such trading, in each case except as the Disabled Exchange and NOM may specifically agree otherwise. NOM rules that govern trading on the Disabled Exchange's facility at NOM shall be deemed to be rules of the Disabled

Exchange for purposes of such trading. Sections (b)(2) and (b)(3) describe the arrangements applicable to trading of the Disabled Exchange's singly and multiply listed options at NOM, and are the converse of Sections (a)(2) and (a)(3). Paragraph (b)(2)(i) includes a provision that would permit NOM to allocate singly listed option classes of the Disabled Exchange to a NOM Market Maker in advance of a Disabling Event, without utilizing the allocation process under NOM Rule Options 2, Section 1, to enable NOM to quickly list such option classes upon the occurrence of a Disabling Event.

Options 4, Section 10(c) describes the obligations of Participants with respect to the trading by "temporary members" on the facilities of another exchange. Section (c)(1) sets forth the obligations applicable to Participants of a Back-up Exchange who act in the capacity of temporary Participants of the Disabled Exchange on the facility of the Disabled Exchange at the Back-up Exchange. Section (c)(1) provides that a temporary Participant of the Disabled Exchange shall be subject to, and obligated to comply with, the rules that govern the operation of the facility of the Disabled Exchange at the Back-up Exchange. This would include the rules of the Disabled Exchange to the extent applicable during the period of such trading, including the rules of the Disabled Exchange limiting its liability for the use of its facilities that apply to members of the Disabled Exchange. Additionally, (i) such temporary Participant shall be deemed to have satisfied, and the Disabled Exchange has agreed to waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a Participant of the Disabled Exchange, including all dues, fees and charges imposed generally upon members of the Disabled Exchange based on their status as such, (ii) such temporary Participant shall have none of the rights of a member of the Disabled Exchange except the right to conduct business on the facility of the Disabled Exchange at the Back-up Exchange to the extent described in the Rule, (iii) the Participant associated with such temporary Participant, if any, shall be responsible for all obligations arising out of that temporary Participant's activities on or relating to the Disabled Exchange, and (iv) the clearing member of such temporary Participant shall guarantee and clear the transactions of such temporary Participant on the Disabled Exchange.

Section (c)(2) sets forth the obligations applicable to members of a Disabled Exchange who act in the capacity of

temporary Participants of the Back-up Exchange for the purpose of trading singly listed and multiply listed options of the Disabled Exchange. Such temporary Participants shall be subject to, and obligated to comply with, the rules of the Back-up Exchange that are applicable to the Back-up Exchange's own members, including the rules of the Back-up Exchange limiting its liability for the use of its facilities that apply to members of the Back-up Exchange. Temporary Participants of the Back-up Exchange have the same obligations as those set forth in Section (c)(1) that apply to temporary Participants of the Disabled Exchange, except that, in addition, temporary Participants of the Back-up Exchange shall only be permitted (i) to act in those capacities on the Back-up Exchange that are authorized by the Back-up Exchange and that are comparable to capacities in which the temporary Participant has been authorized to act on the Disabled Exchange, and (ii) to trade in those option classes in which the temporary Participant is authorized to trade on the Disabled Exchange.

Options 4, Section 10 provides that the rules of the Back-up Exchange shall apply to the trading of the singly and multiply listed options of the Disabled Exchange traded on the Back-up Exchange's facilities, and (with certain limited exceptions) the trading of exclusively listed options of the Disabled Exchange traded on the facility of the Disabled Exchange at the Back-up Exchange. The Back-up Exchange has agreed to perform the related regulatory functions with respect to such trading (except as the Back-up Exchange and the Disabled Exchange may specifically agree otherwise). Section (d) provides that if a Back-up Exchange initiates an enforcement proceeding with respect to the trading during a back-up period of singly or multiply listed options of the Disabled Exchange by a temporary Participant of the Back-up Exchange, or exclusively listed options of the Disabled Exchange by a member of the Disabled Exchange (other than a member of the Back-up Exchange who is a temporary member of the Disabled Exchange), and such proceeding is in process upon the conclusion of the back-up period, the Back-up Exchange may transfer responsibility for such proceeding to the Disabled Exchange following the conclusion of the back-up period.

With respect to arbitration jurisdiction, proposed Section (d) provides that arbitration of any disputes with respect to any trading during a back-up period of singly or multiply listed options of the Disabled Exchange

or of exclusively listed options of the Disabled Exchange on the Disabled Exchange's facility at the Back-up Exchange will be conducted in accordance with the rules of the Back-up Exchange, unless the parties to an arbitration agree that it shall be conducted in accordance with the rules of the Disabled Exchange.

Proposed Supplementary Material .01 to Options 4, Section 10 clarifies that to the extent Options 4, Section 10 provides that another exchange will take certain action, the Rule is reflecting what that exchange has agreed to do by contractual agreement with NOM, but Options 4, Section 10 is not binding on the other exchange.

#### Options 4C

The Exchange proposes to relocate current rule text related to criteria to list U.S. Dollar-Settled Foreign Currency Options to new Options 4C and adopting new rule text similar to Phlx<sup>17</sup> to list and trade these securities as described in more detail below.

#### Section 1. Applicability

Similar to Phlx Options 4C, Section 1 the Exchange proposes to provide,

The Rules in Options 4C are applicable to U.S. Dollar-Settled Foreign Currency Options. Except to the extent that specific rules in this Section, or unless the context otherwise requires, the provisions of Options 4 are applicable to the trading on the Exchange of U.S. Dollar-Settled Foreign Currency Options.

Proposed Options 4C of the Options Listing Rules covers U.S. Dollar-Settled Foreign Currency Options only.

#### Section 2. Definitions

The Exchange proposes to adopt rules to list for trading U.S. Dollar-Settled Foreign Currency Options, which products are currently listed and traded on Phlx. To that end, NOM proposes to adopt the same rules as Phlx Options 4C. The Exchange therefore proposes to adopt applicability rules and definitions similar to Phlx Options 4C, Section 2.

The Exchange proposes to state within proposed Options 4C, Section 2 that the Rules in Options 4C shall be applicable to the trading on the Exchange in option contracts issued by The Options Clearing Corporation, the terms and conditions of such contracts, the exercise and settlement thereof, the handling of orders, and the conduct of

accounts and other matters relating to options trading. Except to the extent that specific Rules in this Options 4C govern or unless the context otherwise requires, the provisions of the By-Laws and of all other Rules and Policies of the Board of Directors shall be applicable to the trading on the Exchange of option contracts. This proposed rule would also note that foreign currency option contracts purchased and sold on the Exchange are designated by reference to the underlying foreign currency (*e.g.*, the British pound), expiration month, exercise price and type (put or call).

The Exchange also proposes to add the below definitions to Options 4C, Section 2(b) and note that "The following terms as used in the Rules shall, unless the context otherwise indicates, have the meanings herein specified:". The definitions that are proposed to be added are:

(1) The term "aggregate exercise price" is as defined within Options 1, Section 1(a)(3).

(2) The term "foreign currency" is as defined within Options 1, Section 1(a)(20).

(3) The term "Exchange Spot Price" in respect of an option contract on a foreign currency means the cash market spot price, for the sale of one foreign currency for another, quoted by various foreign exchange participants for the sale of a single unit of such foreign currency for immediate delivery that is calculated from the foreign currency price quotation reported by the foreign currency price quotation dissemination system selected by the Exchange, to which an appropriate multiplier is applied. The multiplier(s) will be: 100 for the British pound, the Euro, the Swiss Franc, the Canadian dollar, the Australian dollar, the Brazilian real, and the New Zealand dollar; 1,000 for the Chinese yuan, the Danish krone, the Mexican peso, the Norwegian krone, the South African rand, and the Swedish krona; 10,000 for the Japanese yen and the Russian ruble; and 100,000 for the South Korean won.

(4) The term "unit of underlying foreign currency" means a single unit of the foreign currency (*e.g.*, one British pound, one Swiss franc, one Canadian dollar, one Australian dollar, one Japanese yen, one Mexican peso, one Euro, one Brazilian real, one Chinese yuan, one Danish krone, one New Zealand dollar, one Norwegian krone, one Russian ruble, one South African rand, one South Korean won, or one Swedish krona).

#### Section 3. Criteria for Underlying Securities

Options 4, Section 3(m) is being relocated into new Options 4C, Section 3 without change, except that is being re-lettered as "a".

#### Section 4. Withdrawal of Approval of Underlying Securities or Options

NOM proposes to adopt rule text similar to Phlx Options 4C, Section 4 which provides, The Exchange may determine to withdraw approval of an underlying foreign currency whenever it deems such withdrawal advisable in the public interest or for the protection of investors. In the event that the Exchange effects such a withdrawal, the Exchange shall not open for trading any additional series of options of the class covering that underlying foreign currency.

Similar to Phlx, NOM may withdraw approval of an underlying foreign currency whenever it deems such withdrawal advisable in the public interest or for the protection of investors. In the event of a withdrawal, NOM would not open for trading any additional series of options of the class covering that underlying foreign currency.

#### Section 5. Series of U.S. Dollar-Settled Foreign Currency Options Contracts Open for Trading

Similar to Phlx, NOM proposes to adopt rules to permit it to list and trade U.S. Dollar-Settled Foreign Currency Options. After call option contracts or put option contracts relating to a specific underlying foreign currency has been approved for listing and trading on the Exchange, NOM shall from time to time open for trading series of options therein. Prior to the opening of trading in any series of options, NOM shall fix the expiration month and exercise price of option contracts included in such series. NOM proposes to adopt Options 4C, Section 5(a)(1) which states,

Within each class of approved U.S. dollar-settled foreign currency options, the Exchange may open for trading series of options expiring in consecutive calendar months ("consecutive month series"), as provided in subparagraph (A) of this paragraph, and series of options expiring at three-month intervals ("cycle month series"), as provided in subparagraph (B) of this paragraph. Prior to the opening of trading in any series of U.S. dollar-settled FCO, the Exchange shall fix the expiration month and exercise price of option contracts included in each such series. The Exchange may initially list exercise strike prices for each expiration of U.S. dollar-settled options on currencies within a 40 percent band around the current Exchange Spot Price at fifty cent (\$.50) intervals. Thus, if the Exchange Spot Price of the Euro were at \$100.00, the Exchange

<sup>17</sup> See Securities Exchange Act Release No. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (SR-Phlx-2006-34) (Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change as Modified by Amendments No. 1, 2, and 3 Thereto Relating to U.S. Dollar-Settled Foreign Currency Options).

would list strikes in \$.50 intervals up to \$120.00 and down to \$80.00, for a total of eighty-one strike prices available for trading. As the Exchange Spot Price for U.S. dollar-settled FCOs moves, the Exchange may list new strike prices that, at the time of listing, do not exceed the Exchange Spot Price by more than 20 percent and are not less than the Exchange Spot Price by more than 20 percent. For example, if at the time of initial listing, the Exchange Spot Price of the Euro is at \$100.00, the strike prices the Exchange will list will be \$80.00 to \$120.00. If the Exchange Spot Price then moves to \$105.00, the Exchange may list additional strikes at the following prices: \$105.50 to \$126.00.

This rule is identical to Phlx's listing rules for U.S. Dollar-Settled Foreign Currency Options within Phlx Options 4C, Section 5(a)(1).

With respect to consecutive month series, as noted above, each class of U.S. dollar-settled foreign currency option, series of options having up to four consecutive expiration months may be opened for trading simultaneously, with the shortest-term series initially having no more than two months to expiration. Additional consecutive month series of the same class may be opened for trading on the Exchange at or about the time a prior consecutive month series expires, and the expiration month of each such new series shall normally be the month immediately succeeding the expiration month of the then outstanding consecutive month series of the same class of options having the longest remaining time to expiration.

With respect to cycle month series, as noted above, NOM may designate one expiration cycle for each class of U.S. dollar-settled foreign currency option. An expiration cycle is four calendar months ("cycle months") occurring at three-month intervals. With respect to any particular class of U.S. dollar-settled foreign currency option, series of options expiring in the four cycle months designated by the Exchange for that class may be opened for trading simultaneously, with the shortest-term series initially having approximately three months to expiration. Additional cycle month series of the same class may be opened for trading on the Exchange at or about the time a prior cycle month series expires, and the expiration month of each such new series shall normally be approximately three months after the expiration month of the then outstanding cycle month series of the same class of options having the longest remaining time to expiration.

Proposed Options 4C, Section 5(a)(1)(C) provides rules for long-term options series. The Exchange proposes that it may list with respect to any U.S. dollar-settled foreign currencies, options

having up to three years from the time they are listed until expiration. There may be up to ten options series, options having up to thirty-six months from the time they are listed until expiration. There may be up to six additional expiration months. Strike price intervals shall not apply to such options series until the time to expiration is less than twelve months. As proposed herein, bid/ask differentials for long-term options contracts are specified within Options 3, Section 5(d)(2)(A). As noted above the Exchange proposes to consolidate the bid/ask within Options 2.

Proposed Options 4C, Section 5(a)(1)(D) provides that for each expiration month opened for trading of U.S. dollar-settled foreign currency options, in addition to the strike prices listed by the Exchange pursuant to subsection (a)(1) of this Options 4, Section 5, the Exchange shall also list a single strike price of \$0.01. Finally, the Exchange proposes to state at proposed Options 4C, Section 5(a)(1)(E) that additional series of options of the same class may be opened for trading on the Exchange as the market price of the underlying foreign currency moves substantially from the initial exercise price or prices. The opening of a new series of options on the Exchange shall not effect any other series of options of the same class previously opened.

The rule text proposed herein within Options 4C, Section 5(a)(1)(D) and (E) is identical to the same provisions within Phlx's Options 4C.

With respect to exercise price, NOM proposes within Options 4C, Section 5(b) to provide that the exercise price of each series of foreign currency options opened for trading on the Exchange normally shall be fixed at a price per unit which is reasonably close to the current Exchange Spot Price per unit of the underlying foreign currency in the foreign exchange market at or before the time such series of options is first opened for trading on the Exchange, as determined by finding the arithmetic mean of Exchange Spot Prices as defined in Options 4C, Section 2(b)(3) at or about such time. The Exchange may initially list exercise strike prices for each expiration of U.S. dollar-settled options on currencies within a 40 percent band around the current Exchange Spot Price at fifty cent (\$.50) intervals. By way of example, if the Exchange Spot Price of the Euro were at \$100.00, the Exchange would list strikes in \$.50 intervals up to \$120.00 and down to \$80.00, for a total of eighty-one strike prices available for trading. As the Exchange Spot Price for U.S. dollar-settled foreign currencies moves, the

Exchange may list new strike prices that, at the time of listing, do not exceed the Exchange Spot Price by more than 20 percent and are not less than the Exchange Spot Price by more than 20 percent. For example, if at the time of initial listing, the Exchange Spot Price of the Euro is at \$100.00, the strike prices the Exchange will list will be \$80.00 to \$120.00. If the Exchange Spot Price then moves to \$105.00, the Exchange may list additional strikes at the following prices: \$105.50 to \$126.00.

The Exchange proposes to state within Options 4C, Section 5(c) that in fixing the exercise price of one or more series of options on any underlying foreign currency, NOM may take into account the forward sales prices quoted for that underlying foreign currency in the interbank foreign exchange market.

Lastly, the Exchange proposes to state within Options 4C, Section 5(d) that when put option contracts or put and call option contracts are first opened for trading on an underlying foreign currency, NOM may open a series of put option contracts corresponding to each series of call option contracts open or to be opened for trading on the same underlying foreign currency.

All provisions of Options 4C, Section 5 are identical to Phlx's rules with the exception of cross-citations.

#### Section 6. U.S. Dollar-Settled Foreign Currency Option Closing Settlement Value

The Exchange proposes to adopt a new Options 4C, Section 6, titled "U.S. Dollar-Settled Foreign Currency Option Closing Settlement Value" identical to Phlx Options 4C, Section 6.

The Exchange proposes to provide within Options 4, Section 6(a) that U.S. dollar-settled foreign currency options are settled in U.S. dollars.

The Exchange proposes to provide within Options 4C, Section 6(b) the following,

The closing settlement value for the U.S. dollar-settled FCO on the Australian dollar, the Euro, the British pound, the Canadian dollar, the Swiss franc, the Japanese yen, the Mexican peso, the Brazilian real, the Chinese yuan, the Danish krone, the New Zealand dollar, the Norwegian krone, the Russian ruble, the South African rand, the South Korean won, and the Swedish krona shall be the Exchange Spot Price at 12:00:00 Eastern Time (noon) 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 unless the Exchange determines to apply an alternative closing settlement value as a result of extraordinary circumstances.

The closing settlement value for U.S. dollar-settled foreign currency options shall be governed by this provision.

The Exchange proposes to provide within Options 4, Section 6(c) certain liability provisions similar to Phlx Options 4, Section 6(c). The Exchange proposes to state,

Neither the Exchange, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating the current settlement value or the closing settlement value resulting from an act, condition, or cause beyond the reasonable control of the Exchange including but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; any error, omission, or delay in the reports of transactions in one or more underlying currencies or any error, omission or delay in the reports of the current settlement value or the closing settlement value by the Exchange.

NOM's proposal would cause the Exchange to not be liable for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating the current settlement value or the closing settlement value resulting from an act, condition, or cause beyond the reasonable control of the Exchange including but not limited to, an act of God and other extraordinary circumstances.

Finally, the Exchange proposes to provide within Options 4C, Section 6(d) that the Exchange shall post the closing settlement value on its website or disseminate it through one or more major market data vendors. As noted above, this rule is identical to Phlx Options 4C, Section 6.

#### Bid/Ask Differentials

The Exchange proposes to amend Options 4, Section 8(a), and Options 4A, Section 12(b)(1)(A) to relocate text concerning bid/ask differentials for long-term option series, without change. Currently, Options 4, Section 8(a) describes the bid/ask differentials for long-term options series for equity options and exchange-traded products and Options 4A, Section 12(b)(1)(A) describes the bid/ask differentials for long-term options series for indexes. Currently, the bid/ask differentials shall not apply to such options series until the time to expiration is less than nine (9) months for equity options and exchange-traded funds as provided for within Options 4, Section 8(a). Currently, bid/ask differentials shall not apply to such options series until the time to expiration is less than nine (9)

months for index options as provided for within Options 4A, Section 12(b)(1)(A). The Exchange also proposes to lowercase "Paragraph: within Options 4A, Section 12(b)(1).

The Exchange proposes to centralize the bid/ask differentials within Options 2, Section 5(d)(2)(A) and add a sentence to both Options 4, Section 8(a) and Options 4A, Section 12(b)(1)(A) that cites to Options 2, Section 5(d)(2)(A) for information on bid/ask differentials for the various products. The Exchange also proposes to capitalize "ask" in the title of Options 2, Section 5(d)(2). The Exchange believes that this relocation will provide Market Makers with centralized information regarding their bid/ask differential requirements. The Exchange is not amending the bid/ask differentials; the rule text is simply being relocated.

The Exchange also proposes to update a citation to Options 2, Section 5 within Options 2, Section 4, Obligations of Market Makers, within paragraph (a)(1). Specifically, the Exchange proposes to amend the current citation to "Section 5(d)(i)" to instead refer to "Options 2, Section 5(d)(1)."

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>19</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. Conforming NOM's Options 4 Listing Rules to that of ISE Options 4 is part of the Exchange's continued effort to promote efficiency in the manner in which it administers its rules.

The Exchange's proposal to amend Options 4, Sections 1, 2, 5, and 7 reflect non-substantive amendments to conform those rules to similar ISE rules. These proposed changes 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 ease the Participants', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The proposed amendments to ISE Options 3, Section 3(b) to permit the Exchange, in exceptional circumstances,

to select an underlying security even though it does not meet all of the guidelines, is consistent with the Act. Today, the Exchange may establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions. Providing NOM with the same ability to select an underlying security even though it does not meet all of the guidelines as ISE will permit NOM to list similar options as ISE for competitive purposes.

The Exchange's proposal to add the defined term "Financial Instruments" within Options 4, Section 3(h) and also account for money market instruments, U.S. government securities and repurchase agreements, defined by the term "Money Market Instruments" similar to ISE Options 4, Section 3(h) is consistent with the Act. The addition of money market instruments, U.S. government securities and repurchase agreements as securities deemed appropriate for options trading will make clear that these agreements are included in the acceptable securities. The Exchange notes that this rule text is clarifying in nature and will more explicitly provide for money market instruments, U.S. government securities and repurchase agreements as a separate category from what is being defined as "Financial Instruments" with this proposal. Today, these instruments are eligible as securities deemed appropriate for options trading.

The Exchange's proposal to remove the following products from Options 4, Section 3(h): The ETFS Silver Trust, the ETFS Palladium Trust, the ETFS Platinum Trust or the Sprott Physical Gold Trust, is consistent with the Act because the Exchange no longer lists these products and proposes to remove these products from its listing rules. The Exchange will file a proposal with the Commission if it determines to list these products in the future.

The Exchange's proposal to amend Options 4, Section 3(h) by removing the rule text at the end of the paragraph which provides, "all of the following conditions are met," and creating separate paragraphs for Options 4, Section 3(h)(1) and (2) is consistent with the Act. These amendments will de-link these subparagraphs so they are read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares. The Exchange's proposal to clarify that Options 4, Section 3(h)(2) applies to only international or global indexes or portfolios that include non-U.S. securities will bring greater clarity to the qualification standards for listing options on Exchange-Traded Fund

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

Shares. ISE Options 4, Section 3(h) currently has similar rule text. Proposed Options 4, Sections 3(h) generally concerns securities deemed appropriate for options trading. The proposed new rule text adds language stating that subparagraph (h)(2) of Options 4, Section 3 applies to the extent the Exchange-Traded Fund Share is based on international or global indexes or portfolios that include non-U.S. securities. This language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index.

The Exchange's proposal to amend Options 4, Section 3(h)(2)(A) to remove the phrase "for series of portfolio depositary receipts and index fund shares based on international or global indexes," is consistent with the Act. Today, Options 4, Section 3(h), subparagraphs (h)(1) and (h)(v) permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depositary receipts and index fund shares without applying component based requirements in subparagraphs (h)(2)(B)–(D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1).

The Exchange's proposal to amend the term "comprehensive surveillance agreement" within Options 4, Section 3(h)(2) (A)–(D) to instead provide "comprehensive surveillance sharing agreement" is consistent with the Act as the amendment will bring greater clarity to the term.

The Exchange's proposal to add the phrase "if not available or applicable, the Exchange-Traded Fund's" to Options 4, Section 3(h)(2)(B), (C), and (D) is consistent with the Act as it will 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. This rule text currently exists within ISE Options 4, Section 3(h).

The Exchange's proposal to amend and relocate the rule text within Options 4, Section 3(h)(2)(B), (C), and (D) will bring greater clarity to the current rule text by explicitly providing that the index being referenced is the one on which the Exchange-Traded

Fund Shares is based. Also, adding "or portfolio" to Options 4, Section 3(h)(2)(C), and (D) will bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B).

The proposed amendments to Options 4, Section 3(h) will conform NOM's rule text to ISE Options 4, Section 3(h).

The remainder of the change to Options 3, Section 3 are non-substantive and intended to conform to ISE Options 3, Section 3. These proposed changes 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 ease the Participants', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The proposed amendments to Options 4, Section 4 remove unnecessary rule text and make clear that options contracts that are no longer approved will not be listed. The proposed amendments to adopt new Options 4, Section 4(i) similar to ISE, Options 4, Section 4(i), are consistent with the Act. Today, the Exchange would not open additional series of HOLDRs without filing a rule change with the Commission and adopting a corresponding rule. This rule text, similar to ISE, explicitly provides that the Exchange would not open additional series of options overlying HOLDRs (without prior Commission approval) if: (1) The proportion of securities underlying standardized equity options to all securities held in a HOLDRs trust is less than 80% (as measured by their relative weightings in the HOLDRs trust); or (2) less than 80% of the total number of securities held in a HOLDRs trust underlie standardized equity options. This rule text bring greater clarity to NOM's rules in that HOLDRs would not be in certain circumstances.

The Exchange's proposal to remove the rule text within Options 4, Section 4(l), related to inadequate volume delisting, is consistent with the Act. To remain competitive with other options markets, the Exchange proposes to adopt the same obligations for continuance of trading.<sup>20</sup> Also, pursuant to proposed new Options 4, Section 5(e) the Exchange will announce securities that have been withdrawn. With this proposal, the Exchange would eliminate the requirement that an option must be trading for more than 6 months. The

<sup>20</sup> Options 4, Section 4(b), as amended, establishes requirements for continued listing, similar to ISE.

Exchange notes that this condition is not present on other options markets such as ISE and Cboe.<sup>21</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 NOM's requirements are different from other options markets and to remain competitive the Exchange proposes to adopt the same standards as ISE to remain competitive and list similar options as other markets. While the Exchange may in the future determine to delist an option that is singly listed, the Exchange's proposal 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" is consistent with the Act. This rule text does not exist on ISE and Cboe. Today, the Exchange provides notification of a delisting to all Participants making it unnecessary to retain the current 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 remainder of the changes to Options 3, Section 3 remove impediments to and perfect 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 Participants', 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 remove impediments to and perfect 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

<sup>21</sup> See ISE Options 4, Section 4 and Cboe Rule 4.4.

Participants', 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 amend Options 3, Section 8 and Options 4A, Section 12(b)(1)(A) to relocate text concerning bid/ask differentials for long-term option series is consistent with the Act. The Exchange's proposal will centralize the bid/ask differentials within Options 2, Section 5(d)(2)(A) and add a sentence to both Options 3, Section 8 and Options 4A, Section 12(b)(1)(A) that cites to Options 2, Section 5(d)(2)(A) for information on bid/ask differentials for the various products. The Exchange is not amending the bid/ask differentials; the rule text is simply being relocated. The Exchange believes that this relocation will provide Market Makers with centralized information regarding their bid/ask differential requirements.

The Exchange's proposal to amend the current citation to "Section 5(d)(i)" within Options 2, Section 4(a)(1) to instead refer to "Options 2, Section 5(d)(1)" is a non-substantive amendment that will bring greater clarity to the Exchange's rules.

The remainder of the proposed changes to Options 3, Section 8 are non-substantive.

The Exchange believes that adopting a new Section 9, Limitation on the Liability of Index Licensors for Option on Fund Share, similar to ISE, is consistent with the Act. Specifically, this proposal seeks to limit the liability of index licensors who grant NOM a license to use their underlying indexes or portfolios in connection with the trading of options on Fund Shares. This rule text is identical to ISE rule text.<sup>22</sup> 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.

The Exchange believes that the adoption of Options 4, Section 10, Back-up Trading Arrangements, will provide NOM with similar abilities as ISE to permit NOM to enter into arrangements with one or more other exchanges to permit NOM and its Participants to use a portion of a Back-up Exchange's facilities to conduct the trading of NOM exclusively listed<sup>23</sup> options in the event of a Disabling Event, and similarly to permit NOM to provide trading facilities for another exchange's exclusively listed options if a "Disabled Exchange is prevented from trading due to a Disabling Event. With this proposal, NOM is proposing to adopt listing rules similar to Phlx to list and trade U.S. Dollar-Settled Foreign Currency Options. NOM believes that it is important that it develop back-up trading arrangements to minimize the potential disruption and market impact that a Disabling Event could cause. The proposed rule changes are designed to address the key elements necessary to mitigate the effects of a Disabling Event effecting the Exchange, minimize the impact of such an event on market participants, and provide for a liquid and orderly marketplace for securities listed and traded on the Exchange if a Disabling Event occurs. In particular, the proposed rule change is intended to ensure that NOM's exclusively listed and singly listed products will have a trading venue in the event that trading at NOM is prevented due to a Disabling Event. The Exchange believes that having these back-up trading arrangements in place will minimize potential disruptions to the market and investors if a catastrophe occurs that requires the Exchange's primary facility to be closed for an extended period. Phlx and ISE have a similar rule,<sup>24</sup> and the Exchange believes that it is important to the protection of investors and the public interest that it also adopt rules that allow NOM exclusively and singly listed options to continue to trade in the event of a Disabling Event. The proposed rule change also provides authority for NOM to provide a back-up trading venue should another exchange be effected by a Disabling Event, which will benefit the market and investors if a Disabling Event were to happen on another exchange that has entered into a back-up trading arrangement with NOM. Finally, the proposed rule change grants authority to Exchange officials to

take action under emergency conditions, which should enable key actions to be taken by NOM representatives in the event of a Disabling Event, and clarifies the fees that will apply if these back-up trading arrangements are invoked, which will reduce investor confusion and minimize the disruption to investors associated with a Disabling Event. Under proposed paragraph (a)(1)(vi), members of the Back-up Exchange shall not be authorized to trade in any NOM exclusively listed options, except that (i) NOM may deputize willing brokers of the Back-up Exchange as temporary NOM Participants to permit them to execute orders as Participants in NOM exclusively listed options traded on NOM's facility at the Back-up Exchange, and (ii) the Back-up Exchange has agreed that it will, at the instruction of NOM, select members of the Back-up Exchange that are willing to be deputized by NOM as temporary NOM members authorized to trade NOM exclusively listed options on NOM's facility at the Back-up Exchange for such period of time following a Disabling Event as NOM determines to be appropriate, and NOM may deputize such members of the Back-up Exchange as temporary NOM members for that purpose. The foregoing exceptions would permit members of the Back-up Exchange to trade NOM exclusively listed options on NOM's facility on the Back-up Exchange, if, for example, circumstances surrounding a Disabling Event result in NOM members being delayed in connecting to the Back-up Exchange in time for prompt resumption of trading.

The Exchange's proposal to adopt rules to list and trade U.S. Dollar-Settled Foreign Currency Options on NOM that are currently listed and traded on Phlx is consistent with the Act. Specifically, NOM proposes to relocate current rule text related to criteria for listing U.S. Dollar-Settled Foreign Currency Options to new Options 4C and adopting rules to list U.S. Dollar-Settled Foreign Currency Options similar to Phlx.<sup>25</sup> Today, sufficient venues exist for obtaining reliable information on the currencies so that investors in U.S. dollar-settled Foreign Currency Options can monitor the underlying spot market in the currencies. NOM will integrate

<sup>23</sup> As defined within the proposed rule, the term "exclusively listed option" means an option that is listed exclusively by an exchange (because the exchange has an exclusive license to use, or has proprietary rights in, the interest underlying the option).

<sup>24</sup> See Phlx and ISE Rules Options 3, Section 10.

<sup>25</sup> See Securities Exchange Release No. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (SR-Phlx-2006-34) (Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change as Modified by Amendments No. 1, 2, and 3 Thereto Relating to U.S. Dollar-Settled Foreign Currency Options). Today, NOM's rules contain the criteria to list U.S. Dollar-Settled Foreign Currency Options only.

<sup>22</sup> See ISE Options Listing Rule Section 9.

U.S. dollar-settled index options, as well as for physical delivery foreign currency options at the time that NOM lists dollar-settled Foreign Currency Options. In addition, the NOM may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG. U.S. dollar-settled FCO contracts will be aggregated with physical delivery contracts for position and exercise limit purposes. Exchange rules designed to protect public customers trading in FCOs would apply to U.S. dollar-settled FCOs on the Currencies. The Exchange believes that the adoption of these rules will offer investors another venue on which to transact U.S. Dollar-Settled Foreign Currency Options. The listing of U.S. Dollar-Settled Foreign Currency Options will enhance competition by providing investors with an additional investment vehicle.

Similar to Phlx, NOM would adopt an applicability rule within proposed Options 4C, Section 1 and defined terms within Section 2. The Exchange proposes that the criteria for listing U.S. Dollar-Settled Foreign Currency Options be relocated from current Options 4, Section 3(m). Similar to Phlx, NOM rules would adopt rules related to the withdrawal of approval of underlying securities or options to permit NOM to withdraw approval of an underlying foreign currency whenever it deems such withdrawal advisable in the public interest or for the protection of investors. In the event of a withdrawal, NOM would not open for trading any additional series of options of the class covering that underlying foreign currency. Also, NOM proposes to adopt a new Options 4C, Section 5 to describe the manner in which it would list and trade U.S. Dollar-Settled Foreign Currency Options. After call option contracts or put option contracts relating to a specific underlying foreign currency has been approved for listing and trading on the Exchange, NOM shall from time to time open for trading series of options therein. Prior to the opening of trading in any series of options, NOM shall fix the expiration month and exercise price of option contracts included in such series. This rule is identical to Phlx's listing rules for U.S. Dollar-Settled Foreign Currency Options within Phlx Options 4C, Section 5. The determination of the closing settlement value is described within Options 4C, Section 6. The Exchange believes that permitting NOM to list U.S. Dollar-Settled Foreign Currency Options, similar to Phlx, would allow market participants another venue in which to

transact U.S. Dollar-Settled Foreign Currency Options.

#### *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 relocation of the Options Listing Rules will facilitate the use of the Rulebook by Participants of the Exchange, who are members of other Affiliated Exchanges; other market participants; and the public in general. The changes are consistent with the ISE Rulebook.

The Exchange's proposal to amend Options 4, Sections 1, 2, 5, and 7 reflects non-substantive amendments to conform those rules to similar ISE rules at Options 4, Sections 1, 2, 5, and 7. These proposed changes do not impose an undue burden on competition since the changes are intended to ease the Participants', market participants', and the general public's navigation and reading of the rules and lessen potential confusion and add clarity for market participants.

The proposed amendments to ISE Options 3, Section 3(b) to permit the Exchange, in exceptional circumstances, to select an underlying security even though it does not meet all of the guidelines does not impose an undue burden on competition. Today, the Exchange may establish guidelines to be considered in evaluating potential underlying securities for Exchange options transactions. Providing NOM with the same ability to select an underlying security even though it does not meet all of the guidelines as ISE will permit NOM to list similar options as ISE for competitive purposes.

The Exchange's proposal to add the defined term "Financial Instruments" within Options 4, Section 3(h) and also account for money market instruments, U.S. government securities and repurchase agreements, defined by the term "Money Market Instruments" similar to ISE Options 4, Section 3(h) does not impose an undue burden on competition. The addition of money market instruments, U.S. government securities and repurchase agreements as securities deemed appropriate for options trading will make clear that these agreements are included in the acceptable securities.

The Exchange's proposal to remove the following products from Options 4, Section 3(h): The ETFs Silver Trust, the ETFs Palladium Trust, the ETFs Platinum Trust or the Sprott Physical Gold Trust, does not impose an undue burden on competition. The Exchange

no longer lists these products and proposes to remove them the products from its listing rules.

The Exchange's proposal to amend Options 4, Section 3(h) by removing the rule text at the end of the paragraph which provides, "all of the following conditions are met," and creating separate paragraphs for Options 4, Section 3(h)(1) and (2) does not impose an undue burden on competition. These amendments will de-link these subparagraphs so they are read independently. Today, Options 4, Section 3(h)(1) applies to all Exchange-Traded Fund Shares. The Exchange's proposal to clarify that Options 4, Section 3(h)(2) applies to only international or global Exchange-Traded Fund Shares that include non-U.S. securities will bring greater clarity to the qualification standards for listing options on Exchange-Traded Fund Shares. Specifically, this language is intended to serve as a guidepost and clarify that (1) subparagraph (h)(2) does not apply to an Exchange-Traded Fund Shares based on a U.S. domestic index or portfolio, and (2) subparagraph (h)(2) includes Exchange-Traded Fund Shares that track a portfolio and do not track an index. This amendment will uniformly apply the criteria within Options 4, Section 3 when it lists options products on NOM.

The Exchange's proposal to amend Options 4, Section 3(h)(2)(A) to remove the phrase "for series of portfolio depository receipts and index fund shares based on international or global indexes," does not impose an undue burden on competition. Today, Options 4, Section 3(h), subparagraphs (h)(1) and (h)(v) permit the Exchange to list options on Exchange-Traded Fund Shares based on generic listing standards for portfolio depository receipts and index fund shares without applying component based requirements in subparagraphs (h)(2)(B)–(D). By removing the proposed rule text, the Exchange would make clear that subparagraph (h)(2)(A) applies to Exchange-Traded Fund Shares based on international or global indexes, or portfolios that include non-U.S. securities, that are listed pursuant to generic listing standards and comply with Options 4, Section 3(h) and subparagraph (h)(1). This amendment will uniformly apply the criteria within Options 4, Section 3 when it lists options products on NOM.

The Exchange's proposal to amend the term "comprehensive surveillance agreement" within Options 4, Section 3(h)(2) (A)–(D) to instead provide "comprehensive surveillance sharing agreement" does not impose an undue

burden on competition as the amendment will bring greater clarity to the term.

The Exchange's proposal to add the phrase "if not available or applicable, the Exchange-Traded Fund's" to Options 4, Section 3(h)(2)(B), (C), and (D) does not impose an undue burden on competition as it will 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's proposal to amend and relocate the rule text within Options 4, Section 3(h)(2)(B), (C), and (D) will bring greater clarity to the current rule text by explicitly providing that the index being referenced is the one on which the Exchange-Traded Fund Shares is based. Also, adding "or portfolio" to Options 4, Section 3(h)(2)(C), and (D) will bring greater clarity to the rule text by conforming the rule text of (C) and (D) to the language within (B).

The proposed amendments to Options 4, Section 4 remove unnecessary rule text and make clear that options contracts that are no longer approved will not be listed. The proposed amendments to adopt new Options 4, Section 4(i), similar to ISE, Options 4, Section 4(i), does not impose an undue burden on competition. The amendments would provide for provisions wherein the Exchange will not open additional series of options overlying HOLDRs similar to ISE, which provisions do not currently exist.

The Exchange's proposal to remove the rule text within Options 4, Section 4(l), related to inadequate volume delisting, does not impose an undue burden on competition. To remain competitive with other options markets, the Exchange proposes to adopt the same obligations for continuance of trading.<sup>26</sup> Also, pursuant to proposed new Options 4, Section 5(e) the Exchange will announce securities that have been withdrawn. 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>27</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 NOM's requirements are different from

other options markets and to remain competitive the Exchange proposes to adopt the same standards as ISE to remain competitive and list similar options as other markets. The Exchange's proposal removes 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" does not impose an undue burden on competition. This rule text does not exist on ISE 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 Exchange believes that the changes to proposed Options 4, Section 8 do not impose an undue burden on competition as 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.

The Exchange's proposal to amend Options 3, Section 8 and Options 4A, Section 12(b)(1)(A) to relocate rule text concerning bid/ask differentials for long-term option series, without change, does not impose an undue burden on competition. The Exchange believes that this relocation will provide Market Makers with centralized information regarding their bid/ask differential requirements.

Adopting a new Section 9, Limitation on the Liability of Index Licensors for Option on Fund Shares, similar to ISE, does not impose an undue burden on competition. The proposal seeks to limit the liability of index licensors who grant NOM a license to use their underlying indexes or portfolios in connection with the trading of options on Fund Shares. This rule text is identical to ISE rule text.<sup>28</sup> 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 Exchange believes that the adoption of Options 4, Section 10, Back-up Trading Arrangements, will provide NOM with similar abilities as ISE to permit NOM to enter into arrangements with one or more other exchanges to permit NOM and its Participants to use a portion of a Back-up Exchange's facilities to conduct the trading of NOM exclusively listed<sup>29</sup> options in the event of a Disabling Event, and similarly to permit NOM to provide trading facilities for another exchange's exclusively listed options if that Disabled Exchange is prevented from trading due to a Disabling Event.

Permitting NOM to list U.S. Dollar-Settled Foreign Currency Options similar to Phlx would allow market participants another venue in which to transact U.S. Dollar-Settled Foreign Currency Options. U.S. Dollar-Settled Foreign Currency Options would be available for trading to all market participants. The proposal will enhance competition among market participants, to the benefit of investors and the marketplace.

### *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>30</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>31</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>32</sup> normally does not

<sup>29</sup> As defined within the proposed rule, the term "exclusively listed option" means an option that is listed exclusively by an exchange (because the exchange has an exclusive license to use, or has proprietary rights in, the interest underlying the option).

<sup>30</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>31</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.

<sup>32</sup> 17 CFR 240.19b-4(f)(6).

<sup>26</sup> Options 4, Section 4(b), as amended, establishes requirements for continued listing, similar to ISE.

<sup>27</sup> See ISE Options 4, Section 4 and Cboe Rule 4.4.

<sup>28</sup> See ISE Options Listing Rule Section 9.

become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>33</sup> the Commission may designate a shorter time if such action is consistent with protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange's proposal does not raise any new or novel issues. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change to be operative on upon filing.<sup>34</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2021-059 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-NASDAQ-2021-059. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 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-NASDAQ-2021-059 and should be submitted on or before August 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-16676 Filed 8-4-21; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92525; File No. SR-FINRA-2020-04]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 and Amendment No. 2, To Adopt FINRA Rule 4111 (Restricted Firm Obligations) and FINRA Rule 9561 (Procedures for Regulating Activities Under Rule 4111)

July 30, 2021.

#### I. Introduction

On November 16, 2020, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend FINRA's rules to help further address the issue of associated persons with a significant history of misconduct and the broker-dealers that employ them. The proposed rule change was published for comment in the **Federal Register** on December 4, 2020.<sup>3</sup> On January 12, 2021, FINRA consented to extend until March 4, 2021, the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>4</sup> On March 4, 2021, FINRA responded to the comment letters received in response to the Notice.<sup>5</sup> On March 4, 2021, the Commission filed an order instituting proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> On May 7, 2021, FINRA consented to an extension of the time period in which the Commission must approve or disapprove the proposed rule change to July 30, 2021.<sup>7</sup> On May 14, 2021, FINRA filed an amendment to the proposed rule change ("Amendment No. 1").<sup>8</sup> On July 20, 2021, FINRA filed

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

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

<sup>3</sup> See Exchange Act Release No. 90527 (Nov. 27, 2020), 85 FR 78540 (Dec. 4, 2020) (File No. SR-FINRA-2020-041) ("Notice").

<sup>4</sup> See letter from Michael Garawski, Associate General Counsel, OGC Regulatory Practice and Policy, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated January 12, 2021. This letter is available at <https://www.finra.org/sites/default/files/2021-01/SR-FINRA-2020-041-Extension1.pdf>.

<sup>5</sup> See letter from Michael Garawski, Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated March 4, 2021 ("FINRA March 4 Letter"). The FINRA March 4 Letter is available at <https://www.sec.gov/comments/sr-finra-2020-041/srfinra2020041-8445557-229759.pdf>.

<sup>6</sup> See Exchange Act Release No. 91258 (Mar. 4, 2021), 86 FR 13780 (Mar. 10, 2021) (File No. SR-FINRA-2020-041) ("Order Instituting Proceedings"). The Order Instituting Proceedings is available at <https://www.sec.gov/rules/sro/finra/2021/34-91258.pdf>.

<sup>7</sup> See letter from Michael Garawski, Associate General Counsel, Office of General Counsel, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated May 7, 2021. This letter is available at <https://www.finra.org/sites/default/files/2021-05/sr-finra-2020-041-extension2.pdf>.

<sup>8</sup> Amendment No. 1 is available at <https://www.finra.org/sites/default/files/2021-05/sr-finra-2020-041-amendment1.pdf>. FINRA has made a technical correction to the definition of "Member Firm Pending Events" in proposed Rule 4111(i)(4)(E). In the initial filing of the proposed rule change, proposed Rule 4111(i)(4)(E)(ii) included "a pending investigation by a regulatory authority" reportable on the member's Uniform Registration Forms as among the Member Firm Pending Events. The Uniform Registration Forms, however, do not contain disclosure questions or

Continued

<sup>33</sup> 17 CFR 240.19b-4(f)(6).

<sup>34</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>35</sup> 17 CFR 200.30-3(a)(12).