

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99106; File No. SR–PHLX–2023–54]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Monthly Options Series and the Nonstandard Expirations Program

December 7, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on December 4, 2023, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to (i) adopt a Monthly Options Series and (ii) amend its Nonstandard Expirations Program.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (i) adopt Monthly Options Series and (ii) amend its Nonstandard Expirations Program in

Options 4A, Options Index Rules. Each change is discussed in detail below.

Monthly Options Series

The Exchange proposes to amend its Rules to accommodate the listing of option series that would expire at the close of business on the last business day of a calendar month (“Monthly Options Series”).³ Of note, Nasdaq ISE, LLC (“ISE”) will separately file a rule change to adopt a Monthly Options Series for ETFs. Phlx’s Options 4 rules, which govern the ability to transact options on ETFs, incorporate by reference ISE’s Options 4 rules. This rule change proposes to amend Phlx’s index options rules to adopt a Monthly Options Series program. Pursuant to proposed Options 4A, Section 12(b)(5), the Exchange may list Monthly Options Series for up to five currently listed option classes that are either index options or options on ETFs.⁴ In addition, the Exchange may also list Monthly Options Series on any options classes that are selected by other securities exchanges that employ a similar program under their respective rules.⁵ The Exchange may list 12 expirations for Monthly Options Series. Monthly Options Series need not be for consecutive months; however, the expiration date of a nonconsecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively.⁶

³ The Exchange proposes to define a “Monthly Options Series” in Options 4A, Section 2(a)(14) to mean, for the purposes of Options 4A, a series in an options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and that expires at the close of business on the last business day of a calendar month. The Exchange proposes to renumber the subsequent definitions in Options 4A, Section 2.

⁴ As provided in proposed Options 4A, Section 12(b)(5)(a), the Exchange may list Monthly Options Series for up to five currently listed option classes that are either index options or options on ETFs; the five Monthly Options Series include both index options and options on ETFs.

⁵ See Securities Exchange Act Release No. 98915 (November 13, 2023), 88 FR 80356 (November 17, 2023) (SR–Cboe–2023–049) (Order Approving a Proposed Rule Change To Adopt Monthly Options Series) (“Cboe Monthly Approval Order”).

⁶ The Exchange notes this provision considers consecutive monthly listings. In other words, as other expirations (such as Quarterly Options Series) are not counted as part of the maximum, those expirations would not be considered when considering when the last expiration date would be if the maximum number were listed consecutively. For example, if it is January 2024 and the Exchange lists Quarterly Options Series in class ABC with expirations in March, June, September, December, and the following March, the Exchange could also list Monthly Options Series in class ABC with expirations in January, February, April, May, July, August, October, and November 2024 and January and February of 2025. This is because, if Quarterly Options Series, for example, were counted, the

Other expirations in the same class are not counted as part of the maximum numbers of Monthly Options Series expirations for a class.⁷ Monthly Options Series will be P.M.-settled.⁸

The strike price of each Monthly Options Series will be fixed at a price per share, with at least two, but no more than five, strike prices above and at least two, but no more than five, strike prices below the value of the underlying index or price of the underlying security at about the time that a Monthly Options Series is opened for trading on the Exchange. The Exchange will list strike prices for Monthly Options Series that are reasonably related to the current price of the underlying security or current index value of the underlying index to which such series relates at about the time such series of options is first opened for trading on the Exchange. The term “reasonably related to the current price of the underlying security or index value of the underlying index” means that the exercise price is within 30% of the current underlying security price or index value.⁹ Additional Monthly Options Series of the same class may be open for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the market price of the underlying security moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices will be within 30% above or below the closing price of the underlying index or security on the preceding day. The Exchange may also open additional strike prices of Monthly Options Series that are more than 30% above or below the current price of the underlying security, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-Makers trading for their own account will not be considered when

Exchange would otherwise never be able to list the maximum number of Monthly Options Series. This is consistent with the listing provisions for Quarterly Options Series, which permit calendar quarter expirations. The need to list series with the same expiration in the current calendar year and the following calendar year (whether Monthly or Quarterly expiration) is to allow market participants to execute one-year strategies pursuant to which they may roll their exposures in the longer-dated options (e.g., January 2025) prior to the expiration of the nearer-dated option (e.g., January 2024).

⁷ See proposed Options 4A, Section 12(b)(5)(b).

⁸ See proposed Options 4A, Section 12(b)(5)(c).

⁹ See proposed Options 4A, Section 12(b)(5)(d). The Exchange notes this proposed provision is consistent with the initial series provision for the Quarterly Options Series program in Options 4A, Section 12(b)(3)(C).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

determining customer interest under this provision. The opening of the new Monthly Options Series will not affect the series of options of the same class previously opened.¹⁰ The interval between strike prices on Monthly Options Series will be the same as the interval for strike prices for series in that same options class that expire in accordance with the normal monthly expiration cycle.¹¹

By definition, Monthly Options Series can never expire in the same week as a standard expiration series (which expire on the third Friday of a month) in the same class expires. The same, however, is not the case with regards to Short Term Option Series¹² or Quarterly Options Series. Therefore, to avoid any confusion in the marketplace, the Exchange proposes to amend Options 4A Section 12(b)(5)(b) to provide the Exchange will not list a Short Term Option Series in a class on a date on which a Monthly Options Series or Quarterly Options Series expires.¹³ Similarly, proposed Options 4A, Section 12(b)(5)(b) provide that no Monthly Options Series may expire on a date that coincides with an expiration date of a Quarterly Options Series in the same index. In other words, the Exchange will not list a Short Term Option Series on an index if a Monthly Options Series on that index were to expire on the same date, nor will the Exchange list a Monthly Options Series on an index if a Quarterly Options Series on that index were to expire on the same date to prevent the listing of series with concurrent expirations.¹⁴

¹⁰ See proposed Options 4A, Section 12(b)(5)(e).

¹¹ See proposed Options 4A, Section 12(b)(5)(f) (permissible strike prices for index options).

¹² Today, Options 4A, Section 12(a)(4) provides that index options may have expiration months and weeks, which expirations may occur in consecutive weeks. The Exchange proposes to add “as specified below” to this rule text.

¹³ The Exchange also proposes to make non-substantive changes to Options 4A, Section 12(b)(4) and Options 4A, Section 12(b)(4)(B) to reference standard options series and change current references to “monthly options series” to “standard expiration options series” (*i.e.*, series that expire on the third Friday of a month), to eliminate potential confusion. The current references to “monthly options series” are intended to refer to those series that expire on the third Friday of a month, which are generally referred to in the industry as standard expirations.

¹⁴ The Exchange notes this would not prevent the Exchange from listing a P.M.-settled Monthly Options Series on an index with the same expiration date as an A.M.-settled Short Term Option Series on the same index, both of which may expire on a Friday. In other words, the Exchange may list a P.M.-settled Monthly Options Series on an index concurrent with an A.M.-settled Short Term Option Series on that index and both of which expire on a Friday. The Exchange believes this concurrent listing would provide investors with yet another hedging mechanism and is

With respect to Monthly Options Series added pursuant to proposed Options 4A, Section 12(b)(5)(a) through (f), the Exchange will, on a monthly basis, review series that are outside a range of five strikes above and five strikes below the current price of the underlying index or security, and delist series with no open interest in both the put and the call series having a: (i) strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month pursuant to Options 4A, Section 12(b)(5)(g)(1). Notwithstanding this delisting policy, customer requests to add strikes and/or maintain strikes in Monthly Options Series in series eligible for delisting will be granted. In connection with this delisting policy, if the Exchange identifies series for delisting, the Exchange will notify other options exchanges with similar delisting policies regarding eligible series for delisting and will work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed Monthly Options Series.¹⁵

The Exchange believes that Monthly Options Series will provide investors with another flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie option contracts. The Exchange believes limiting Monthly Options Series to five classes will ensure the addition of these new series will have a negligible impact on the Exchange’s and the Options Price Reporting Authority’s (“OPRA’s”) quoting capacity. The Exchange represents it has the necessary systems capacity to support new options series that will result from the introduction of Monthly Options Series.

The Exchange notes that Options 4A, Section 6, Position Limits for Broad-Based Index Options, will apply to Monthly Options Series. In Options 4A, Section 6(e), Monthly Options Series will be aggregated with positions in options contracts on the same underlying security or index.¹⁶ This is consistent with how position (and exercise) limits are currently imposed on series with other expirations (Short Term Option Series and Quarterly

Options Series). Therefore, positions in options within class of index, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. The Exchange believes this will address potential manipulative schemes and adverse market impacts surrounding the use of options.

Options Series). Therefore, positions in options within class of index, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. The Exchange believes this will address potential manipulative schemes and adverse market impacts surrounding the use of options.

The Exchange also represents its current surveillance programs will apply to Monthly Options Series and will properly monitor trading in the proposed Monthly Options Series. The Exchange currently lists Quarterly Options Series in certain ETF classes pursuant to Options 4, Section 5, which expire at the close of business at the end of four calendar months (*i.e.*, the end of each calendar quarter), and has not experienced any market disruptions nor issues with capacity. The Exchange’s surveillance programs currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Option Series and standard expiration series, will apply to the proposed Monthly Options Series. The Exchange believes its surveillances continue to be designed to deter and detect violations of its Rules, including position and exercise limits and possible manipulative behavior, and these surveillances will apply to Monthly Options Series that the Exchange determines to list for trading. Ultimately, the Exchange does not believe the proposed rule change raises any unique regulatory concerns because existing safeguards—such as position and exercise limits (and the aggregation of options overlying the same index) and reporting requirements—would continue to apply.

Nonstandard Expirations Program

The Exchange proposes to amend Options 4A, Section 12(b)(6), as renumbered in this proposal,¹⁷ which governs its Nonstandard Expirations Program (“Program”), to permit P.M.-settled options on any broad-based index eligible for standard options trading that expire on Tuesday or Thursday.¹⁸ Currently under the

¹⁷ The Exchange proposes to renumber current Options 4A, Section 12(b)(5), titled Nonstandard Expiration Pilot Program, Options 4A, Section 12(b)(6). Additionally, the Exchange proposes to remove the word “Pilot” as the program is no longer a pilot. See Securities Exchange Act Release No. 98451 (September 20, 2023), 88 FR 66088 (September 26, 2023) (SR-Phlx-2023-07) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Make Permanent Certain P.M.-Settled Pilots).

¹⁸ The Exchange’s proposal is based on a recently approved rule change by Cboe Options. See Securities Exchange Act Release No. 98957 (November 15, 2023), 88 FR 81130 (November 21, 2023) (SR-CBOE-2023-054) (order Approving a Proposed Rule Change To Amend Rule 4.13 To

reasonable given these series would not be identical (unless if they were both P.M.-settled).

¹⁵ See Options 4A, Section 12(b)(5)(g)(3).

¹⁶ Pursuant to Options 4A, Section 10, exercise limits for index option contracts shall be equivalent to the position limits described in Options 4A, Section 6.

Program, the Exchange is permitted to list P.M.-settled options on any broad-based index eligible for standard trading that expire on: (1) any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration (as defined below) and, with respect to options on the Nasdaq-100 Index (“NDX options”) and the Nasdaq 100 Micro Index (“XND options”) any Tuesday or Thursday (“Weekly Expirations”) and (2) the last trading day of the month (“End of Month Expirations” or “EOMs”).¹⁹ The Exchange notes that permitting Tuesday and Thursday expirations for all broad-based indexes, as proposed, would be in addition to the options with Monday, Wednesday and Friday expirations that the Exchange may (and does) already list on those indexes, as they are permissible Weekly Expirations for options on a broad-based index pursuant to Options 4A, Section 12(b)(6). The proposal merely expands the availability of Tuesday and Thursday Weekly Expirations, and thus all Weekly Expirations available under the Program, to all broad-based indexes eligible for standard options trading, on which the Exchange may currently list Monday, Wednesday, and Friday Weekly expirations under the Program.

The Program for Weekly Expirations will apply to any broad-based index option with Tuesday and Thursday expirations in the same manner as it currently applies to all other P.M.-settled broad-based index options with Monday, Wednesday, and Friday expirations and to NDX and XND options with Tuesday and Thursday expirations. Specifically, as set forth in Options 4A, Section 12(b)(6), Weekly Expirations, including the proposed Tuesday and Thursday expirations, are subject to all provisions of Options 4A, Section 12 and treated the same as options on the same underlying index that expire on the third Friday of the expiration month; provided, however, that Weekly Expirations are P.M.-settled, and new series in Weekly Expirations may be added up to and including on the expiration date for an expiring Weekly Expiration.

The maximum number of expirations that may be listed for each Weekly Expiration (*i.e.*, a Monday expiration, Tuesday expiration, Wednesday expiration, Thursday expiration, or Friday expiration, as applicable) in a

given class is the same as the maximum number of expirations permitted in Options 4A, Section 12(a)(3) for standard options on the same broad-based index. Weekly Expirations need not be for consecutive Monday, Tuesday, Wednesday, Thursday, or Friday expirations as applicable; however, the expiration date of a nonconsecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively. Weekly Expirations that are first listed in a given class may expire up to four weeks from the actual listing date. If the Exchange lists EOMs and Weekly Expirations as applicable in a given class, the Exchange will list an EOM instead of a Weekly Expiration that expires on the same day in the given class. Other expirations in the same class are not counted as part of the maximum number of Weekly Expirations for an applicable broad-based index class. If the Exchange is not open for business on a respective Monday, the normally Monday expiring Weekly Expirations will expire on the following business day. If the Exchange is not open for business on a respective Tuesday, Wednesday, Thursday, or Friday, the normally Tuesday, Wednesday, Thursday, or Friday expiring Weekly Expirations will expire on the previous business day. If two different Weekly Expirations on a broad-based index would expire on the same day because the Exchange is not open for business on a certain weekday, the Exchange will list only one of such Weekly Expirations. In addition, like all Weekly Expirations, Options 4A, Section 12(b)(6), transactions in expiring broad-based index options with Tuesday and Thursday expirations may be effected on the Exchange between the hours of 9:30 a.m. and 4:00 p.m. on their last trading day (Eastern Time).

The Exchange believes that the introduction of Tuesday and Thursday expirations for all broad-based index options (rather than offering those expirations for just two indexes) will expand hedging tools available to market participants while also providing greater trading opportunities, regardless of in which index option market they participate. By offering expanded Tuesday and Thursday expirations along with the current Monday, Wednesday and Friday expirations, the proposed rule change will allow market participants to purchase options on all broad-based index options available for trading on the Exchange in a manner more aligned with specific timing needs and more

effectively tailor their investment and hedging strategies and manage their portfolios. In particular, the proposed rule change will allow market participants to roll their positions on more trading days, thus with more precision, spread risk across more trading days and incorporate daily changes in the markets, which may reduce the premium cost of buying protection.

The Exchange believes there is sufficient investor interest and demand in Tuesday and Thursday expirations for broad-based index options beyond NDX and XND to warrant inclusion in the Program and that the Program, as amended, will continue to provide investors with additional means of managing their risk exposures and carrying out their investment objectives.²⁰ With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it believes that the Exchange and OPRA have the necessary systems capacity to handle any potential additional traffic associated with trading of broad-based index options with Tuesday and Thursday expirations. The Exchange does not believe that its Members will experience any capacity issues as a result of this proposal and represents that it will monitor the trading volume associated with any possible additional options series listed as a result of this proposal and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange’s automated systems.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.²¹ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)²² requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

²⁰ The Exchange currently lists Tuesday and Thursday expirations in NDX and XND options pursuant to the Program. The Exchange also already allows options on broad-based indexes to expire on Tuesdays for normally Monday or Wednesday expiring options when the Exchange is not open for business on a respective Monday or Wednesday (as applicable), and already allows options on broad-based indexes to expire on Thursdays for normally Friday expiring options when the Exchange is not open for business on a respective Friday. Also, EOM options in any broad-based indexes may currently be listed to expire on a Tuesday or Thursday.

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

Expand the Nonstandard Expirations Program To Include P.M.-Settled Options on Broad-Based Indexes That Expire on Tuesday or Thursday) (“Cboe Nonstandard Approval Order”).

¹⁹ See Supplementary Material .07 to Options 4A, Section 12.

practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)²³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Monthly Options Series

In particular, the Exchange believes the introduction of Monthly Options Series will remove impediments to and perfect the mechanism of a free and open market and a national market system by expanding hedging tools available to market participants. The Exchange believes the proposed monthly expirations will allow market participants to transact in the index options listed pursuant to the proposed rule change based on their timing as needed and allow them to tailor their investment and hedging needs more effectively. Further, the Exchange believes the availability of Monthly Options Series would protect investors and the public interest by providing investors with more flexibility to closely tailor their investment and hedging decisions in these options, thus allowing them to better manage their risk exposure.

The Exchange believes the Quarterly Options Series Program has been successful to date and the proposed Monthly Options Series program simply expands the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur at months' ends in the same way the Quarterly Options Series Program has expanded the landscape of hedging for quarter-end news. Monthly Options Series will also complement Short Term Option Series, which allow investors to hedge risk against events that occur throughout a month. The Exchange believes the availability of additional expirations should create greater trading and hedging opportunities for investors, as well as provide investors with the ability to tailor their investment objectives more effectively.

The Exchange notes the proposed terms of Monthly Options Series, including the limitation to list up to five

options classes that are either index options or options on ETFs, are substantively the same as the current terms of Quarterly Options Series for ETF classes.²⁴ Quarterly Options Series expire on the last business day of a calendar quarter, which is the last business day of every third month. The proposed Monthly Options Series would fill the gaps between Quarterly Options Series expirations by permitting series to expire on the last business day of every month, rather than every third month. The proposed Monthly Options Series may be listed in accordance with the same terms as Quarterly Options Series, including permissible strikes.²⁵ As is the case with Quarterly Options Series, no Short Term Option Series may expire on the same day as a Monthly Options Series. Similarly, as proposed, no Monthly Options Series may expire on the same day as a Quarterly Options Series. The Exchange believes preventing listing series with concurrent expirations in a class will eliminate potential investors confusion and thus protect investors and the public interest. Given that the Exchange currently lists Quarterly Options Series in certain ETF classes pursuant to Options 4, Section 5, which expire at the close of business at the end of four calendar months (*i.e.*, the end of each calendar quarter), the Exchange believes it is reasonable to list Monthly Options Series in accordance with the same terms, as it will promote just and equitable principles of trade. The Exchange believes limiting Monthly Options Series to five classes will ensure the addition of these new series will have a negligible impact on the Exchange's and OPRA's quoting capacity. The Exchange represents it has the necessary systems capacity to support new options series that will result from the introduction of Monthly Options Series.

The Exchange further believes the proposed rule change regarding the treatment of Monthly Options Series with respect to determining compliance with position and exercise limits is designed to prevent fraudulent and manipulative acts and practices and

²⁴ See Options 4, Section 5. As noted herein, ISE will file a rule change to amend Options 4, Section 5 and Phlx's Options 4 rules are incorporated by reference to ISE's Options 4 rules.

²⁵ The Exchange notes the proposed maximum number of expirations is consistent with the maximum number of expirations permitted for end-of-month series in index classes. See Options 4A, Section 12(a)(4) which permits up to 12 standard monthly expirations at any one time for any class that the Exchange (as the Reporting Authority) uses to calculate a volatility index; and (iii) up to 12 standard (monthly) expirations in NDX options, Nasdaq-100 ESG Index Options, and XND options).

promote just and equitable principles of trade. Monthly Options Series will be aggregated with options overlying the same index for purposes of compliance with position (and exercise) limits, which is consistent with how position (and exercise) limits are currently imposed on series with other expirations (Short Term Option Series, and Quarterly Options Series).²⁶ Therefore, options positions within index option classes for which Monthly Options Series are listed, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. The Exchange believes this will address potential manipulative schemes and adverse market impacts surrounding the use of options. The Exchange also represents its current surveillance programs will apply to Monthly Options Series and will properly monitor trading in the proposed Monthly Options Series. The Exchange currently trades Quarterly Options Series in certain index classes, which expire at the close of business at the end of four calendar months (*i.e.*, the end of each calendar quarter), and has not experienced any market disruptions nor issues with capacity. The Exchange's surveillance programs currently in place to support and properly monitor trading in these Quarterly Options Series, as well as Short Term Option Series and standard expiration series, will apply to the proposed Monthly Options Series. The Exchange believes its surveillances continue to be designed to deter and detect violations of its Rules, including position and exercise limits and possible manipulative behavior, and these surveillances will apply to Monthly Options Series that the Exchange determines to list for trading. Ultimately, the Exchange does not believe the proposed rule change raises any unique regulatory concerns because existing safeguards—such as position and exercise limits (and the aggregation of options overlying the same index) and reporting requirements—would continue to apply.

Nonstandard Expirations Program

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes

²⁶ See Cboe Monthly Approval Order; *see also* Options 4A, Section 6 regarding position limits for broad-based index options). Pursuant to Options 4A, Section 10, exercise limits for index option contracts shall be equivalent to the position limits described in Options 4A, Section 6.

²³ *Id.*

that the introduction of Tuesday and Thursday expirations for all broad-based index options (rather than offering those expirations for just two indexes) will provide investors with expanded hedging tools and greater trading opportunities and flexibility, regardless of in which index option market they participate. As a result, investors will have additional means to manage their risk exposures and carry out their investment objectives. By offering expanded Tuesday and Thursday expirations along with the current Monday, Wednesday and Friday expirations, the proposed rule change will allow market participants to purchase options on all broad-based index options available for trading on the Exchange in a manner more aligned with specific timing needs and more effectively tailor their investment and hedging strategies and manage their portfolios. For example, the proposed rule change will allow market participants to roll their positions on more trading days, thus with more precision, spread risk across more trading days and incorporate daily changes in the markets, which may reduce the premium cost of buying protection. The Exchange represents that it believes that it has the necessary systems capacity to support any additional traffic associated with trading of options on all broad-based index options with Tuesday and Thursday expirations and does not believe that its Members will experience any capacity issues as a result of this proposal.

The Commission previously recognized that listing Tuesday and Thursday expirations for NDX and XND options was consistent with the Act.²⁷ The Exchange noted that Tuesday and Thursday expirations in these index options would offer additional investment options to investors and may be useful for their investment or hedging objectives.²⁸ The Exchange also notes it previously listed P.M.-settled broad-based index options with weekly expirations pursuant to a pilot program, so the Commission could monitor the impact of P.M. settlement of cash-settled index derivatives on the underlying cash markets (while recognizing that these risks may have been mitigated given enhanced closing procedures in use in the primary equity markets); however, the Commission recently

approved a proposed rule change to make that pilot program permanent.²⁹ The Commission noted that the data it reviewed in connection with the pilot demonstrated that these options (including SPX and XSP options with Tuesday and Thursday expirations) “benefitted investors and other market participants by providing more flexible trading and hedging opportunities while also having no disruptive impact on the market” and were thus consistent with the Act.³⁰ The proposed rule change is consistent with these findings, as it will benefit investors and other market participants that participate in the markets for broad-based index options other than NDX and XND options in the same manner by providing them with more flexible trading and hedging opportunities. Additionally, the Exchange does not believe the listing of additional P.M.-settled options on other broad-based indexes will have any significant economic impact on the underlying component securities surrounding the close as a result of expiring p.m.-settled options or impact market quality, based on the data provided to and reviewed by the Commission (and the Commission’s own conclusions based on that review, as noted above) and due to the significant changes in closing procedures in the decades since index options moved to a.m.-settlement.³¹

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.

Monthly Options Series

The Exchange does not believe the proposed rule change to list Monthly Options Series will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as any Monthly Options Series the Exchange lists for trading will be available in the same manner for all market participants who wish to trade such options. The Exchange notes the proposed terms of Monthly Options Series, including the limitation to list up to five options classes that are either index options or options on ETFs, are substantively the same as the current terms of Quarterly Options Series.³² Quarterly Options Series expire on the last business day of

a calendar quarter, which is the last business day of every third month, making the concept of Monthly Options Series in a limited number of index options not novel. The proposed Monthly Options Series will fill the gaps between Quarterly Options Series expirations by permitting series to expire on the last business day of every month, rather than every third month. The proposed Monthly Options Series may be listed in accordance with the same terms as Quarterly Options Series, including permissible strikes.³³ Monthly Options Series will trade on the Exchange in the same manner as other options in the same class.

The Exchange does not believe the proposed rule change to list Monthly Options Series will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as nothing prevents other options exchanges from proposing similar rules.³⁴ As discussed above, the proposed rule change would permit listing Monthly Options Series in up to five options classes that are either index options or options on ETFs, as well as any other classes that other exchanges may list under similar programs. To the extent that the availability of Monthly Options Series makes the Exchange a more attractive marketplace to market participants at other exchanges, market participants are free to elect to become market participants on the Exchange.

The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition. Similar to Short Term Option Series and Quarterly Options Series, the Exchange believes the introduction of Monthly Options Series will not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants. The Exchange believes Monthly Options Series will allow market participants to purchase options based on their timing as needed and allow them to tailor their investment and hedging needs more effectively.

The Exchange does not believe the proposed rule change regarding aggregation of positions for purposes of determining compliance with position (and exercise) limits will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will apply in the same manner to all market participants. The Exchange proposes to apply position

²⁷ See Securities Exchange Act Release Nos. 96411 (November 30, 2022), 87 FR 74688 (December 6, 2022) (SR-Phlx-2022-38) (“XND Options Rule Change”); and 95391 (July 29, 2022), 87 FR 47797 (August 4, 2022) (SR-Phlx-2022-22) (“NDX Rule Change”).

²⁸ See XND Options Rule Change at 74689; and NDX Options Rule Change at 47798.

²⁹ See *supra* note 17.

³⁰ See *supra* note 17.

³¹ See *id.*

³² See proposed Options 4A, Section 12(b)(5)(a).

³³ See *supra* note 25.

³⁴ See Cboe Monthly Approval Order.

(and exercise) limits to Monthly Options Series in the same manner it applies position limits to series with other expirations (Short Term Option Series and Quarterly Options Series).

Therefore, positions in options in a class of index options, regardless of their expirations, would continue to be subject to existing position (and exercise) limits. Additionally, the Exchange does not believe this proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because it will address potential manipulative schemes and adverse market impacts surrounding the use of options.

Nonstandard Expirations Program

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because options on broad-based indexes with Tuesday and Thursday expirations will be available to all market participants. By listing options on all available broad-based indexes that expire on Tuesdays and Thursdays, the proposed rule change will provide all investors that participate in the markets for options on all broad-based indexes available for trading on the Exchange with greater trading and hedging opportunities and flexibility to meet their investment and hedging needs, which are already available for NDX and XND options. Additionally, Tuesday and Thursday expiring broad-based index options will trade in the same manner as Weekly Expirations currently trade, including Tuesday and Thursday expiring NDX and XND options.

The Exchange does not believe that the proposal to list options on all broad-based indexes with Tuesday and Thursday expirations will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because these options are proprietary Exchange products. Other exchanges offer nonstandard expiration programs for index options as well as short-term options programs for certain equity options (including options on certain exchange-traded funds that track broad-based indexes) that expire on Tuesdays and Thursdays³⁵ and are welcome to similarly propose to list Tuesday and

³⁵ See, e.g., ISE Options 4A, Section 12 (permitting nonstandard expirations, including expirations on Tuesdays and Thursdays, for NDX and XND options). See also Cboe Nonstandard Approval Order (permitting nonstandard expirations, including expirations on Tuesdays and Thursdays, for SPX and XSP options).

Thursday options on those index or equity products. To the extent that the addition of options on additional broad-based indexes that expire on Tuesdays and Thursdays being available for trading on the Exchange makes the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on the Exchange.

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

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act³⁶ and Rule 19b-4(f)(6) thereunder.³⁷ 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 Act³⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.³⁹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act⁴⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)⁴¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange may list Monthly Options Series and options on all broad-based indexes with Tuesday and Thursday expirations close in time to Cboe Options, which the Exchange believes will benefit investors by promoting competition in both of these programs.

³⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁷ 17 CFR 240.19b-4(f)(6).

³⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

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

⁴⁰ 17 CFR 240.19b-4(f)(6).

⁴¹ 17 CFR 240.19b-4(f)(6)(iii).

The Exchange notes that its proposal is substantively identical to the proposals submitted by Cboe Options for its Monthly Options Series program⁴² and Nonstandard Expirations Program.⁴³ The Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.⁴⁴

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-PHLX-2023-54 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-PHLX-2023-54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the

⁴² See Cboe Monthly Approval Order, *supra* note 5.

⁴³ See Cboe Nonstandard Approval Order, *supra* note 18.

⁴⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-PHLX-2023-54 and should be submitted on or before January 3, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99115; File No. SR-ICC-2023-014]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the Clearance of Additional Credit Default Swap Contracts

December 7, 2023.

I. Introduction

On October 25, 2023, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to clear additional credit default swap ("CDS") contracts. The proposed rule change was published for comment in the **Federal Register** on November 7,

2023.³ The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICC is registered with the Commission as a clearing agency for the purpose of clearing CDS contracts. Chapter 26 of ICC's Rulebook covers the CDS contracts that ICC clears, with each subchapter of Chapter 26 defining the characteristics and additional Rules applicable to the various specific categories of CDS contracts that ICC clears. Among other CDS contracts, ICC currently clears Standard Emerging Market Sovereign Single Name CDS ("SES") contracts.

The purpose of the proposed rule change is to amend ICC's rules to permit ICC to clear additional SES contracts, specifically, SES contracts on the Kingdom of Morocco and the Federal Republic of Nigeria.

To carry out this change, the proposed rule change would amend Subchapter 26D of Chapter 26. In Rule 26D-102 (Definitions), "Eligible SES Reference Entities," the proposed rule change would add the Kingdom of Morocco and the Federal Republic of Nigeria to the list of specific Eligible SES Reference Entities to be cleared by ICC.

As discussed below, these additional SES contracts have terms consistent with the other SES contracts that ICC is already clearing. Likewise, to clear these additional contracts, ICC will be able to rely on its existing Risk Management Framework and other policies and procedures without making any changes.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.⁴ For the reasons given below, the proposed rule change is consistent with section 17A(b)(3)(F) of the Act⁵ and Rule 17Ad-22(e)(1) thereunder.⁶

³ Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the Clearance of Additional Credit Default Swap Contracts; Exchange Act Release No. 98833 (Nov. 1, 2023), 88 FR 76870 (Nov. 7, 2023) (File No. SR-ICC-2023-014) ("Notice").

⁴ 15 U.S.C. 78s(b)(2)(C).

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 17 CFR 240.17Ad-22(e)(1).

a. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.⁷

The proposed rule change is consistent with section 17A(b)(3)(F) of the Act.⁸ The terms and conditions of the additional SES contracts proposed for clearing are substantially similar to the terms and conditions of the other contracts listed in Subchapter 26D of ICC's Rules, all of which ICC currently clears, with the key difference being the underlying reference obligations. The underlying reference obligations will be issuances by the Kingdom of Morocco and the Federal Republic of Nigeria.

A review of the Notice and ICC's Rules, policies, and procedures shows that ICC would be able to clear the additional SES contracts pursuant to its existing clearing arrangements and related financial safeguards, protections, and risk management procedures. Furthermore, a review of data on volume, open interest, and the number of ICC Clearing Participants ("CPs") that currently trade in the SES contracts, as well as certain model parameters for the additional contracts, show that ICC's rules, policies, and procedures are reasonably designed to price and measure the potential risk presented by the additional SES contracts, collect financial resources in proportion to such risk, and liquidate the additional contracts in the event of a CP default. This should help ensure ICC's ability to maintain the financial resources it needs to provide its critical services and function as a central counterparty, thereby promoting the prompt and accurate settlement of the additional SES contracts and other credit default swap transactions.

Therefore, clearance of the additional SES contracts would promote the prompt and accurate clearance and settlement of securities transactions, consistent with section 17A(b)(3)(F) of the Act.⁹

b. Consistency With Rule 17Ad-22(e)(1)

Rule 17Ad-22(e)(1) requires ICC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁵ 17 CFR 200.30-3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.