

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>26</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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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](mailto:rule-comments@sec.gov). Please include file number SR-NASDAQ-2023-044 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-2023-044. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE,

Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2023-044 and should be submitted on or before December 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98944; File No. SR-NYSEARCA-2023-63]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the Grayscale Ethereum Futures Trust (ETH) ETF Under NYSE Arca Rule 8.200-E, Commentary .02 (Trust Issued Receipts)

November 15, 2023.

On September 19, 2023, NYSE Arca, Inc. ("NYSE Arca") 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 list and trade shares of the Grayscale Ethereum Futures Trust (ETH) ETF under NYSE Arca Rule 8.200-E, Commentary .02 (Trust Issued Receipts). The proposed rule change was published for comment in the **Federal Register** on October 3, 2023.<sup>3</sup>

Section 19(b)(2) of the Act<sup>4</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may

designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 17, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> designates January 1, 2024, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NYSEARCA-2023-63).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98947; File No. SR-NYSEARCA-2023-58]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the Hashdex Bitcoin Futures ETF Under NYSE Arca Rule 8.500-E (Trust Units)

November 15, 2023.

On September 22, 2023, NYSE Arca, Inc. ("NYSE Arca") 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 list and trade shares of the Hashdex Bitcoin Futures ETF under NYSE Arca Rule 8.500-E (Trust Units). The proposed rule change was published for

<sup>27</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> See Securities Exchange Act Release No. 98567 (Sept. 27, 2023), 88 FR 68171. The Commission has received no comments on the proposal.

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

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> 17 CFR 200.30-3(a)(31).

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

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

<sup>26</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

comment in the **Federal Register** on October 3, 2023.<sup>3</sup>

Section 19(b)(2) of the Act<sup>4</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 17, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> designates January 1, 2024, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NYSEARCA-2023-58).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98950; File No. SR-Phlx-2023-45]

### Self-Regulatory Organizations; Nasdaq PHLX, LLC; Order Approving a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq-100 Index<sup>®</sup> Options With a Third-Friday-of-the-Month Expiration

November 15, 2023.

#### I. Introduction

On September 28, 2023, Nasdaq PHLX, LLC (“Phlx” or “Exchange”)

<sup>3</sup> See Securities Exchange Act Release No. 98564 (Sept. 27, 2023), 88 FR 68188. Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nysearca-2023-58/srnysearca202358.htm>.

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

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> 17 CFR 200.30-3(a)(31).

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 permit the listing and trading of p.m.-settled Nasdaq-100 Index options with a third-Friday-of-the-month (“Third Friday”) expiration. The proposed rule change was published for comment in the **Federal Register** on October 4, 2023.<sup>3</sup> The Commission did not receive any comment letters and is approving the proposed rule change.

#### II. Description of the Proposal

Phlx proposes to amend its rules to permit the listing and trading of p.m.-settled Nasdaq-100 Index (“NDXP”) options with a Third Friday expiration. The Exchange currently can list a.m.-settled Third Friday expirations on Nasdaq-100 Index (“NDX”) options.<sup>4</sup> With this proposal, the Exchange would have Third Friday expirations on NDX options that are both a.m.-settled and p.m.-settled on the same day.<sup>5</sup> The Exchange states that the conditions for listing options on NDXP with Third Friday expirations will be similar to the a.m.-settled NDX Third Friday expirations.<sup>6</sup> The Exchange proposes to amend Options 4A, Section 12(a)(6) to provide that in addition to a.m.-settled Nasdaq-100 Index options approved for trading on the Exchange, the Exchange may also list options on the Nasdaq-100 Index whose exercise settlement value is the closing value of the Nasdaq-100 Index on the expiration day.

The proposed contract would use a \$100 multiplier, and the minimum trading increment would be \$0.05 for options trading below \$3.00 and \$0.10 for all other series.<sup>7</sup> Strike price intervals would be set at no less than \$2.50.<sup>8</sup> Consistent with existing rules for index options, the Exchange would allow up to nine near-term expiration months<sup>9</sup> as well as LEAPS.<sup>10</sup> The product would have European-style exercise. Because the product is based

on NDX, there would be no position limits.<sup>11</sup>

NDXP options are series of the NDX options class.<sup>12</sup> Currently, these NDXP options may expire any day of the week: Mondays, Tuesdays, Wednesdays, Thursdays, Fridays, as applicable (other than third-Friday-of-the-month), and the last trading day of the month.<sup>13</sup> Third Friday p.m.-settled options trading under the NDXP symbol will be a new type of series under the Nasdaq-100 Index options class and not a new options class—therefore all Third-Friday NDXP options will be aggregated together with all other standard expirations for applicable reporting and other requirements.<sup>14</sup>

As with NDX, whenever the Exchange determines that additional margin is warranted in light of the risks associated with an under-hedged NDXP option position, including Third Friday NDXP, the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position pursuant to its authority pursuant to Exchange Rules Options 6E, Section 2.<sup>15</sup> The trading hours for NDXP, including Third Friday NDXP, will be from 9:30 a.m. to 4:15 p.m. Eastern Time.<sup>16</sup>

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>17</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>18</sup> which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

<sup>11</sup> For a more detailed description of the proposed Third Friday NDXP contract, see Notice, *supra* note 3.

<sup>12</sup> See Notice, *supra* note 3 at 68886.

<sup>13</sup> See Options 4A, Section 12(b)(5)(A).

<sup>14</sup> See Options 3, Section 6(e).

<sup>15</sup> See Notice, *supra* note 3 at 68886.

<sup>16</sup> The Exchange notes that trading in NDXP will ordinarily cease at 4:00 p.m. on the day on which the exercise-settlement value is calculated. See Notice, *supra* note 3 at 68886, n. 17.

<sup>17</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 98644 (September 29, 2023), 88 FR 68885 (“Notice”).

<sup>4</sup> See Notice, *supra* note 3 at 68885.

<sup>5</sup> See *id.*

<sup>6</sup> See *id.*

<sup>7</sup> See Options 3, Section 3, Minimum Increments.

<sup>8</sup> See Options 4A, Section 12(a)(3).

<sup>9</sup> The Exchange proposes the same expiration month options for NDXP as are permitted for the Nasdaq-100 Index, since both options classes are derived from the Nasdaq-100 Index.

<sup>10</sup> See Options 4A, Section 12(b).