

to “Research on PPPs directly associated with testing and/or producing vaccines, such as generation of high growth strains”?

6. NSABB recommends that continued assessment of the risks and benefits associated with advances and applications of bioinformatics, modeling, and other *in silico* experimental approaches and research involving genes from or encoding pathogens, toxins, or other agents must inform future evaluations of the scope of research oversight policies to help ensure that associated risks are appropriately identified and managed. (Recommendation 10.2). This type of research is not currently included in the DURC and ePPP oversight policies.

(a) Is there a subset of such *in silico* research that should require risk assessment and review in a Revised Policy, and if so, how should this research be defined so that the Policy captures the appropriate research without hampering activities with limited biosecurity risks?

(b) One possible way to define this category of *in silico* research within a Revised Policy would be to include experiments that are reasonably anticipated to:

“(i) Develop *in silico* models that directly enable the predictive design of an enhanced potential pandemic pathogen or novel pathogen or toxin covered under a Revised Policy that could be constructed via genomic editing or *de novo* synthesis; and/or

(ii) Develop a dataset(s) connecting nucleic acid or amino acid sequences with experimentally-determined pathogenic functions in a manner sufficient to enable the development of *in silico* models described in (i).”

If a new category of research, similar to the examples provided above, were to require risk assessment and review in a Revised Policy, what would be the benefits and challenges with implementation?

Dated: August 28, 2023.

**Stacy Murphy,**

*Deputy Chief Operations Officer/Security Officer.*

[FR Doc. 2023-18906 Filed 8-31-23; 8:45 am]

**BILLING CODE 3270-F1-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98233; File No. SR-ISE-2023-08]

### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Make Permanent Certain P.M.-Settled Pilots

August 28, 2023.

On February 23, 2023, Nasdaq ISE LLC (“ISE” or “Exchange”) 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 make permanent the pilot program to permit the listing and trading of options based on 1/5 the value of the Nasdaq-100 Index and the Exchange’s nonstandard expirations pilot program. The proposed rule change was published for comment in the **Federal Register** on March 2, 2023.<sup>3</sup>

On April 7, 2023, pursuant to section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On May 11, 2023, the Exchange filed Amendment No. 1 to the proposed rule change (“Amendment No. 1”).<sup>6</sup> On May 31, 2023, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change and published Amendment No. 1 for notice and comment.<sup>7</sup>

Section 19(b)(2) of the Exchange 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 filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed

<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. 96979 (February 24, 2023), 88 FR 13182.

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

<sup>5</sup> See Securities Exchange Act Release No. 97261, 88 FR 22509 (April 13, 2023).

<sup>6</sup> Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-ise-2023-08/srise202308.htm>.

<sup>7</sup> See Securities Exchange Act Release No. 97626, 88 FR 37110 (June 6, 2023).

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

rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on March 2, 2023.<sup>9</sup> The 180th day after publication of the proposed rule change is August 29, 2023. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds it 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 change and the issues raised therein. Accordingly, the Commission, pursuant to section 19(b)(2) of the Exchange Act,<sup>10</sup> designates October 28, 2023, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-ISE-2023-08).

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

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-18898 Filed 8-31-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98231; File No. SR-CboeBZX-2023-062]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Initial Period After Commencement of Trading of a Series of ETF Shares on the Exchange as It Relates to the Holders of Record and/or Beneficial Holders, as Provided in Exchange Rule 14.11(l)

August 28, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 14, 2023, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

<sup>9</sup> See *supra* note 3 and accompanying text.

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

<sup>11</sup> 17 CFR 200.30-3(a)(57).

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

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

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

Cboe BZX Exchange, Inc. (the "Exchange" or "Cboe") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to Exchange Rule 14.11(l), Exchange-Traded Fund Shares ("ETF Shares"), to amend the initial period after commencement of trading of a series of ETF Shares on the Exchange as it specifically relates to holders of record and/or beneficial holders. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), at the Exchange's Office of the Secretary, 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 change to Rule 14.11(l)(4)(B)(i)(c) (the "Beneficial Holders Rule") in order to amend the continued listing standard applicable to ETF Shares<sup>3</sup> listed on the Exchange. Specifically, the Exchange is proposing to amend the Beneficial Holders Rule such that it would provide additional

<sup>3</sup> The term "ETF Shares" means shares of stock issued by an Exchange-Traded Fund. See Exchange Rule 14.11(l)(3)(A). The term "Exchange-Traded Fund" has the same meaning as the term "exchange-traded fund" as defined in Rule 6c-11 under the Investment Act of 1940. See Exchange Rule 14.11(l)(3)(B).

time for a series of ETF Shares to meet the Beneficial Holders<sup>4</sup> standards.<sup>5,6</sup>

Currently, the Exchange's continued listing standard for ETF Shares under the Beneficial Holders Rule requires that, following the initial 12-month period after commencement of trading on the Exchange, the Exchange shall consider the suspension of trading in and will commence delisting proceedings under Rule 14.12 for a series of ETF Shares for which there are fewer than 50 Beneficial Holders for 30 or more consecutive trading days. The Exchange is proposing to change the date at which a series of ETF Shares would need to have at least 50 Beneficial Holders or be subject to delisting proceedings under Rule 14.12 from 12 months after commencement of trading on the Exchange to 36 months after commencement of trading on the Exchange.

As further described below, the Exchange believes it is appropriate to increase the period of time for a series of ETF Shares to comply with the Beneficial Holders Rule from 12 months to 36 months because: (i) it would bring the rule more in line with the life cycle of an ETP; (ii) the economic and competitive structures in place in the ETP ecosystem naturally incentivize issuers to de-list products rather than continuing to list products that do not garner investor interest; and (iii) extending the period from 12 to 36 months will not meaningfully impact the manipulation concerns that the Beneficial Holders Rule is intended to address.

First, the Exchange-Traded Product ("ETP")<sup>7</sup> space generally is more competitive than it has ever been—with more than 2,000 ETPs listed on U.S. national securities exchanges competing for investor assets, the natural cycle for

<sup>4</sup> As it relates to this filing, "Beneficial Holders" shall mean beneficial holders and, where applicable in a particular continued listing standard, record holders.

<sup>5</sup> The Exchange notes that its Rules related to the listing and trading of other product types (that is, products that are not ETF Shares as defined above) have similar requirements related to Beneficial Holders which the Exchange is not proposing to change at this time. Specifically, the Exchange is only proposing to amend the Beneficial Holders Rules as it pertains to ETF Shares because such product type represents the vast majority of products listed on the Exchange. The Exchange may consider proposing to amend the Beneficial Holders standards for other product types in a future proposal.

<sup>6</sup> The Exchange notes that a different proposal to modify the Beneficial Holders Rules was disapproved by the Commission on December 29, 2020. See Securities Exchange Act No. 90819 (December 29, 2020) 86 FR 332 (January 5, 2021) (SR-CboeBZX-2020-036) (the "Prior Disapproval").

<sup>7</sup> The Exchange notes that ETF Shares is a type of ETP.

an average ETP to gain traction in the market is growing longer and longer. As more and more ETPs have come to market, many distribution platforms have become more restrictive about the ETPs that they allow on their systems, often requiring a minimum existing track record (e.g., at least 12 months) and meeting certain thresholds for assets under management (e.g., at least \$100 million) for an ETP to be added. Similarly, many larger entities are unwilling to invest in ETPs that do not have at least one calendar year track record. All of these factors have contributed to the natural slowing of the average ETP's growth cycle and, unsurprisingly, the Exchange has seen a significant number of deficiencies based on a failure to meet the Beneficial Holders standards over the last several years.

The Exchange has issued deficiency notifications to 39 ETPs for non-compliance with the Beneficial Holders standards since 2015. Of those 39 ETPs, 30 attained compliance with the Beneficial Holder standards after the deficiency notice was issued. This means that more than three quarters of these ETPs had to go through the process of requesting and justifying an extension,<sup>8</sup> dealing with shareholder uncertainty, waste of internal resources, potentially engage outside counsel, etc. all to end up remaining listed on the Exchange. This false positive rate is unnecessarily high and makes clear that a 12-month threshold is an inappropriately short time frame for the Beneficial Holder standards. It only served as regulatory and administrative burdens for impacted issuers, which makes it more difficult for smaller issuers to compete because they have limited resources to overcome legal, marketing, or other obstacles that arise from the Beneficial Holders standards.

Changing the timeline for meeting the Beneficial Holders Rule from 12 months to 36 months would provide ETF Shares with a more reasonable runway to establish a track record and grow assets under management, both of which generally precede the accumulation of Beneficial Holders. Further, the Exchange believes that extending that runway will encourage smaller issuers to make the necessary capital expenditures to launch additional ETF

<sup>8</sup> Exchange Rule 14.12(f)(2) provides that the Listings Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to certain listing standards, including a failure to meet a continued listing requirement contained in Rule 14.11. Generally, Exchange staff may grant up to 180 calendar days from the date of the staff's initial deficiency notification.

Shares, as well as help both large and small issuers by allowing them to continue to list and promote products that they believe can succeed and that they are willing to continue paying for, all of which will help to foster competition and innovation in the ETP marketplace.

Second, the economic and competitive structures in place in the ETP ecosystem naturally incentivize issuers to de-list products rather than continuing to list products that do not garner investor interest, meaning that the rule does not provide any meaningful “pruning” function for the industry.<sup>9</sup> Rather, the Exchange has found that, as currently constructed, the 12 month Beneficial Holders standards have instead resulted in the forced termination of ETPs that issuers believed were still economically viable. While some observers might argue that forced delisting of an ETP based on a failure to meet the Beneficial Holders standards is a good way to reduce the number of ETPs in the marketplace that have not drawn meaningful market interest, the Exchange disagrees with this sentiment. First, there are significant costs associated with both the initial launch and continued operation of an ETP and the Exchange has found that the ecosystem tends to prune itself of ETPs without meaningful investor interest. In fact, the Exchange has had 148 products that have voluntarily delisted since 2018,<sup>10</sup> creating meaningful turnover in products which issuers believe are not economically viable. Second, the Exchange contests the underlying assumption that the number of Beneficial Holders is even a meaningful measure of market interest in an ETP. While a very high Beneficial Holder count would most certainly indicate an ETP’s success, the absence of Beneficial Holders is not necessarily a good measure of market interest or the amount of assets held by the ETP.

Further to this point, the Beneficial Holders standards are not rules that an ETP issuer is incentivized to cut close or exceed by the smallest amount possible. Unlike many other quantitative or disclosure based listing requirements, an ETP issuer is incentivized to have as many Beneficial

Holder as possible and would almost certainly prefer that they were able to meet and exceed the applicable Beneficial Holders standard as soon as possible after beginning trading on the Exchange. As such, extending the time period from 12 months to 36 months will not provide issuers of ETF Shares with a longer window to intentionally keep the number of Beneficial Holders lower, but, rather, will only extend the period during which a series of ETF Shares could have fewer than 50 Beneficial Holders in specific instances where an issuer is unable to meet the 50 Beneficial Holders threshold but still believes that the series of ETF Shares is viable and worth the cost of continued operation. Again, it takes money and resources to launch and operate an ETP and where an issuer does not believe that an ETP is economically viable, both common sense and prior experience point to issuers delisting these products.

Finally, the Exchange believes that making this change does not create any significant change in the risk of manipulation for ETF Shares listed on the Exchange for several reasons. First, a time extension to meet the requirement would present no new issues because the Exchange already has no Beneficial Holder requirement for the first 12 months of trading ETF Shares on the Exchange. Any risk that is present during months 12 through 36 of initial listing would also be present during the first 12 months as provided under current rules. The Exchange believes that the Beneficial Holders standards are generally intended to ensure that products that do not have broad ownership and could be susceptible to manipulation by a few parties are not able to list on the Exchange after they’ve had sufficient time to diversify their ownership base. Leaving aside the issue of whether an open-ended ETP with creation and redemption processes would really be subject to manipulation by virtue of narrow ownership, the Exchange believes that, for all of the reasons explained above, 36 months is a more appropriate amount of time to consider sufficient time to diversify a series of ETF Shares ownership base.

Further to this point, the Exchange has in place a robust surveillance program for ETPs that allows it to monitor trading of ETPs, including ETF Shares, during all trading sessions on the Exchange and it believes are sufficient to deter and detect violations of Exchange rules and the applicable federal securities laws. These surveillances generally focus on detecting securities trading outside of their normal patterns, which could be indicative of manipulative or other

violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Further, the Exchange or the Financial Industry Regulatory Authority (“FINRA”),<sup>11</sup> on behalf of the Exchange, or both, communicate as needed regarding trading in ETPs with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”). The Exchange believes these robust surveillance procedures have successfully mitigated manipulation concerns during an ETPs first 12 months of listing on the Exchange, during which there is currently no Beneficial Holder requirement, and further believes that these surveillance procedures will act to mitigate any manipulation concerns that arise from extending the compliance period for the Beneficial Holders Rules from 12 months to 36 months.

The Exchange also believes that the other continued listing standards in the Exchange’s rules or representations that constitute continued listing standards in Exchange rule filings (the disclosure obligations applicable under Rule 6c–11 of the Investment Company Act of 1940 for series of ETF Shares) are generally sufficient to mitigate manipulation concerns associated with ETF Shares. During the first 12 months of trading on the Exchange when the Beneficial Holders standards do not apply, these disclosure obligations, in conjunction with the Exchange’s surveillance program (as discussed above), are generally deemed sufficient to prevent any manipulation concerns in Exchange-listed ETPs. As such, the Exchange believes that extending the period from 12 months to 36 months does not significantly increase any risk of manipulation that wasn’t already generally deemed acceptable for the first 12 months that an ETP was listed. Again, the Exchange is not proposing to eliminate the Beneficial Holders Rule, but merely to extend the period for a series of ETF Shares to meet the 50 Beneficial Holder requirement.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act<sup>12</sup> in general and section 6(b)(5) of the Act<sup>13</sup> in particular in that it is designed to promote just and

<sup>9</sup> Approximately 43 ETPs have voluntarily delisted within their first year listed on the Exchange since 2015. The Exchange notes that a subset of this group might also include those who didn’t want to spend the extra funds to get an extension to the requirement.

<sup>10</sup> There are currently 613 ETPs listed on the Exchange and 777 have been listed on the Exchange for at least some period since 2018, meaning that there’s been a nearly 19% voluntary turnover of ETPs listed on the Exchange since 2018.

<sup>11</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

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.

The proposed rule changes are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would prevent the premature delisting of ETF Shares that have not had sufficient time to build up to 50 Beneficial Holders without significantly impacting the manipulation concerns that the Beneficial Holders Rule is intended to address.

The Exchange believes it is appropriate to increase the period of time for a series of ETF Shares to comply with the applicable Beneficial Holders Rule from 12 months to 36 months because: (i) it would bring the rule more in line with the life cycle of an ETP; (ii) the economic and competitive structures in place in the ETP ecosystem naturally incentivize issuers to de-list products rather than continuing to list products that do not garner investor interest; and (iii) extending the period from 12 to 36 months will not meaningfully impact the manipulation concerns that the Beneficial Holders Rule is intended to address.

First, the ETP space is more competitive than it has ever been—with more than 2,000 ETPs listed on U.S. national securities exchanges competing for investor assets, the natural cycle for an average ETP to gain traction in the market is growing longer and longer. As more and more ETPs have come to market, many distribution platforms have become more restrictive about the ETPs that they allow on their systems, often requiring a minimum existing track record (e.g., at least 12 months) and meeting certain thresholds for assets under management (e.g., at least \$100 million) for an ETP to be added. Similarly, many larger entities are unwilling to invest in ETPs that do not have at least one calendar year track record. All of these factors have contributed to the natural slowing of the average ETP's growth cycle and, unsurprisingly, the Exchange has seen a significant number of deficiencies based on a failure to meet the applicable Beneficial Holders standards over the last several years.

The Exchange has issued deficiency notifications to 39 ETPs for non-compliance with the Beneficial Holders standards since 2015. Of those 39 ETPs,

30 attained compliance with the Beneficial Holder standards after the deficiency notice was issued. This means that more than three quarters of these ETPs had to go through the process of requesting and justifying an extension,<sup>14</sup> dealing with shareholder uncertainty, waste of internal resources, potentially engage outside counsel, etc. all to end up remaining listed on the Exchange. This false positive rate is unnecessarily high and makes clear that a 12-month threshold is an inappropriately short time frame for the Beneficial Holder standards. It only served as regulatory and administrative burdens for impacted issuers, which makes it more difficult for smaller issuers to compete because they have limited resources to overcome legal, marketing, or other obstacles that arise from the Beneficial Holders requirement.

Changing the timeline for meeting the Beneficial Holders Rules from 12 months to 36 months would provide ETF Shares with a more reasonable runway to establish a track record and grow assets under management, both of which generally precede the accumulation of Beneficial Holders. Further, the Exchange believes that extending that runway will encourage smaller issuers to make the necessary capital expenditures to launch additional ETF Shares, as well as help both large and small issuers by allowing them to continue to list and promote products that they believe can succeed and that they are willing to continue paying for, all of which will help to foster competition and innovation in the ETP marketplace.

Second, the economic and competitive structures in place in the ETP ecosystem naturally incentivize issuers to de-list products rather than continuing to list products that do not garner investor interest, meaning that the rule does not provide any meaningful “pruning” function for the industry.<sup>15</sup> Rather, the Exchange has found that, as currently constructed, the 12 month Beneficial Holders Rule has instead resulted in the forced

<sup>14</sup> Exchange Rule 14.12(f)(2) provides that the Listings Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to certain listing standards, including a failure to meet a continued listing requirement contained in Rule 14.11. Generally, Exchange staff may grant up to 180 calendar days from the date of the staff's initial deficiency notification.

<sup>15</sup> Approximately 43 ETPs have voluntarily delisted within their first year listed on the Exchange since 2015. The Exchange notes that a subset of this group might also include those who didn't want to spend the extra funds to get an extension to the requirement.

termination of ETPs that issuers believed were still economically viable. While some observers might argue that forced delisting of an ETP based on a failure to meet the Beneficial Holders Rule is a good way to reduce the number of ETPs in the marketplace that have not drawn meaningful market interest, the Exchange disagrees with this sentiment. First, there are significant costs associated with both the initial launch and continued operation of an ETP and the Exchange has found that the ecosystem tends to prune itself of ETPs without meaningful investor interest. In fact, the Exchange has had 148 products that have voluntarily delisted since 2018,<sup>16</sup> creating meaningful turnover in products which issuers believe are not economically viable. Second, the Exchange contests the underlying assumption that the number of Beneficial Holders is even a meaningful measure of market interest in an ETP. While a very high Beneficial Holder count would most certainly indicate an ETP's success, the absence of Beneficial Holders is not necessarily a good measure of market interest or the amount of assets held by the ETP.

Further to this point, the Beneficial Holders Rule is not a rule that an ETP issuer is incentivized to cut close or exceed by the smallest amount possible. Unlike many other quantitative or disclosure based listing requirements, an ETP issuer is incentivized to have as many Beneficial Holders as possible and would almost certainly prefer that they were able to meet and exceed the Beneficial Holders Rule as soon as possible after beginning trading on the Exchange. As such, extending the time period from 12 months to 36 months will not provide issuers with a longer window to intentionally keep the number of Beneficial Holders lower, but, rather, will only extend the period during which a series of ETF Shares could have fewer than 50 Beneficial Holders in specific instances where an issuer is unable to meet the 50 Beneficial Holders threshold but still believes that the ETP is viable and worth the cost of continued operation. Again, it takes money and resources to launch and operate an ETP and where an issuer does not believe that an ETP is economically viable, both common sense and prior experience point to issuers delisting these products.

Finally, the Exchange believes that making this change does not create any

<sup>16</sup> There are currently 613 ETPs listed on the Exchange and 777 have been listed on the Exchange for at least some period since 2018, meaning that there's been a nearly 19% voluntary turnover of ETPs listed on the Exchange since 2018.

significant change in the risk of manipulation for ETF Shares listed on the Exchange for several reasons. First, a time extension to meet the requirement would present no new issues because the Exchange already has no Beneficial Holder requirement for the first 12 months of trading ETF Shares on the Exchange. Any risk that is present during months 12 through 36 of initial listing would also be present during the first 12 months as provided under current rules. The Exchange believes that the rule is generally intended to ensure that products that do not have broad ownership and could be susceptible to manipulation by a few parties are not able to list on the Exchange after they've had sufficient time to diversify their ownership base. Leaving aside the issue of whether an open-ended ETP with creation and redemption processes would really be subject to manipulation by virtue of narrow ownership, the Exchange believes that, for all of the reasons explained above, 36 months is a more appropriate amount of time to consider sufficient time to diversify an ETP's ownership base.

Further to this point, the Exchange has in place a robust surveillance program for ETPs that allows it to monitor trading of ETPs during all trading sessions on the Exchange and it believes are sufficient to deter and detect violations of Exchange rules and the applicable federal securities laws. These surveillances generally focus on detecting securities trading outside of their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Further, the Exchange or the FINRA,<sup>17</sup> on behalf of the Exchange, or both, communicate as needed regarding trading in ETPs with other markets and other entities that are members of the ISG. The Exchange believes these robust surveillance procedures have successfully mitigated manipulation concerns during an ETPs first 12 months of listing on the Exchange, during which there is currently no Beneficial Holder requirement, and further believes that these surveillance procedures will act to mitigate any manipulation concerns that arise from extending the compliance

period for the Beneficial Holders Rule from 12 months to 36 months.

The Exchange also believes that the other continued listing standards in the Exchange's rules or representations that constitute continued listing standards in Exchange rule filings (the disclosure obligations applicable under Rule 6c-11 of the Investment Company Act of 1940 for series of ETF Shares) are generally sufficient to mitigate manipulation concerns associated with the ETF Shares. During the first 12 months of trading on the Exchange when the Beneficial Holders Rule does not apply, these disclosure obligations, in conjunction with the Exchange's surveillance program (as discussed above), are generally deemed sufficient to prevent any manipulation concerns in Exchange-listed ETF Shares. As such, the Exchange believes that extending the period from 12 months to 36 months will not significantly increase any risk of manipulation that wasn't already generally deemed acceptable for the first 12 months that a series of ETF Shares was listed. Again, the Exchange is not proposing to eliminate the Beneficial Holders Rule, but merely to extend the period for a series of ETF Shares to meet the 50 Beneficial Holder requirement.

The proposed rule change is also designed to protect investors and the public interest because the Exchange is only proposing to amend the continued listing requirement related to Beneficial Holders and all ETPs listed on the Exchange would continue to be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act.

#### *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 that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed rule change would help to encourage smaller issuers to make the necessary capital expenditures to launch additional ETF Shares, as well as help both large and small issuers by allowing them to continue to list and promote products that they believe can succeed and that they are willing to continue paying for, which 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*

The Exchange neither solicited nor received comments on the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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-CboeBZX-2023-062 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-CboeBZX-2023-062. 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

<sup>17</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

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-CboeBZX-2023-062 and should be submitted on or before September 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

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

[FR Doc. 2023-18896 Filed 8-31-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-087, OMB Control No. 3235-0078]

### Submission for OMB Review; Comment Request; Extension: Rule 15c3-3

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 15c3-3 (17 CFR 240.15c3-3), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). Furthermore, notice is given regarding new collections of information that were previously proposed in Rule 18a-4 (OMB No. 3235-0700) and that were moved to this Rule 15c3-3 (OMB No. 3235-0078) based on comments received during the rulemaking process.

With respect to the extension of the previously approved collection of information, Rule 15c3-3 requires that a

broker-dealer that holds customer securities obtain and maintain possession and control of fully paid and excess margin securities they hold for customers. In addition, the Rule requires that a broker-dealer that holds customer funds make either a weekly or monthly computation to determine whether certain customer funds need to be segregated in a special reserve bank account for the exclusive benefit of the firm's customers. It also requires that a broker-dealer maintain a written notification from each bank where a Special Reserve Bank Account is held acknowledging that all assets in the account are for the exclusive benefit of the broker-dealer's customers, and to provide written notification to the Commission (and its designated examining authority) under certain, specified circumstances. Finally, broker-dealers that sell securities futures products ("SFP") to customers must provide certain notifications to customers and make a record of any changes of account type.

A broker-dealer required to maintain the Special Reserve Bank Account prescribed by Rule 15c3-3 must obtain and retain a written notification from each bank in which it has a Special Reserve Bank Account to evidence the bank's acknowledgement that assets deposited in the Account are being held by the bank for the exclusive benefit of the broker-dealer's customers. In addition, a broker-dealer must immediately notify the Commission and its designated examining authority if it fails to make a required deposit to its Special Reserve Bank Account. Finally, a broker-dealer that effects transactions in SFPs for customers will also have paperwork burdens to make a record of each change in account type.

The Commission staff estimates a total annual time burden of approximately 1,109,518 hours and a total annual cost burden of approximately \$3,516,241 to comply with the existing information collection requirements of the rule.

In 2019, the Commission adopted amendments to establish segregation and notice requirements for broker-dealers with respect to their security-based swap activity. The Commission staff estimates a total annual time burden of approximately 19,487 hours and a total annual cost burden of approximately \$13,860 to comply with the information collection requirements of the 2019 amendments to the rule.

The Commission staff thus estimates that the aggregate annual information collection burden associated with Rule 15c3-3 is approximately 1,129,005 hours and \$3,530,101.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website, [www.reginfo.gov](http://www.reginfo.gov). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent by October 2, 2023 to (i) [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain) and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: August 29, 2023.

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

[FR Doc. 2023-18968 Filed 8-31-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98228; File No. SR-Phlx-2023-38]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 8 Rules

August 28, 2023.

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 August 14, 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 amend its Rules at Options 8 concerning Floor Trading.

The text of the proposed rule change is available on the Exchange's website at

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

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

<sup>18</sup> 17 CFR 200.30-3(a)(12).