

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="30"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2013"/> - * <input type="text" value="131"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by **NASDAQ OMX PHLX LLC.**
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A proposal to use Nasdaq Execution Services, LLC ("NES") as opposed to Nasdaq Options Services LLC ("NOS") for outbound order routing.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * <input type="text" value="Edith"/>	Last Name * <input type="text" value="Hallahan"/>
Title * <input type="text" value="Principal Associate General Counsel"/>	
E-mail * <input type="text" value="edith.hallahan@nasdaqomx.com"/>	
Telephone * <input type="text" value="(215) 496-5179"/>	Fax <input type="text" value="(215) 496-6729"/>

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date <input type="text" value="12/31/2013"/>	Executive Vice President and General Counsel
By <input type="text" value="Edward S. Knight"/>	<input type="text"/>
(Name *)	

Persona Not Validated - 1383935917270,

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) NASDAQ OMX PHLX LLC (“Exchange” or “Phlx”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“Commission”) a proposal to use Nasdaq Execution Services, LLC (“NES”) as opposed to Nasdaq Options Services LLC (“NOS”) for outbound order routing, as explained further below. The Exchange also proposes to permit the Exchange to route equities and options orders through NES either directly or through a third party routing broker-dealer, as explained further below.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on July 17, 2013. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to Edith Hallahan, Principal Associate General Counsel, The NASDAQ OMX Group, Inc., at 215-496-5179.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposal is to update the Exchange's rules to reflect the ability to route orders to other exchanges using either the Exchange's affiliated broker-dealer or a third party unaffiliated broker-dealer, which the Exchange may choose to use for efficiency and potential cost savings.

Today, the relevant Exchange rules provide that the Exchange shall route orders in options via Nasdaq Options Services LLC ("NOS") and in equities³ via Nasdaq Execution Services LLC ("NES"). Both NOS and NES are affiliates and member organizations of Phlx. As a result, certain conditions have been imposed on the existing routing arrangements.⁴

Replacing NOS with NES

The Exchange proposes to amend its rules to provide that it shall use NES for routing orders in options rather than NOS. The Exchange has determined to use NES for outbound routing in options, in addition to equities. The Exchange originally set up its affiliated broker-dealers as two separate entities. Now, the Exchange believes that this is unnecessary and costly. Accordingly, pursuant to Rule 1080(m)(iii), NES will now be the outbound routing broker for Phlx options. As the new Routing Facility for options, NES will operate the same way as NOS currently does, in terms of routing options orders

³ The Exchange operates an equities market known as PSX.

⁴ See, e.g., Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26751 (June 3, 2009) (SR-Phlx-2009-32) at 26756.

to destination options exchanges pursuant to Rule 1080(m).⁵ This is substantially similar to NYSEArca's use of its affiliate Archipelago Securities LLC for order routing in both equities and options.

Third-Party Routing Broker

The Exchange also proposes to codify in its rules the ability to use a third-party routing broker, rather than routing directly through NES, for both equities and options. Today, the Exchange has used a third-party routing broker in equities and is amending Rule 3315 to clarify this and incorporate the third-party routing broker expressly into that rule. Specifically, today, the Exchange routes equities orders to NES, which, in turn, sometimes routes directly to away markets; in addition, sometimes when the Exchange routes equities orders to NES today, NES routes those orders to a third-party routing broker.

In options, the Exchange currently routes options orders to NOS, which routes directly to away markets. The Exchange proposes to use NES, rather than NOS, as explained above, and to have NES route either directly to other options exchanges or to a third-party routing broker (which will, in turn, route to other options exchanges). The Exchange proposes to amend Rule 1080(m) accordingly.

Regardless of whether a third-party routing broker is used in either equities or options, all routing will go through NES, but the Exchange could determine to direct NES

⁵ NOS also, with Commission approval, currently executes and reports the underlying security component of a Complex Order, pursuant to Rule 1080.08(h). NES will now perform this function and this paragraph will be amended accordingly. Rule 1080(n)(ii)(J) will be amended in a similar fashion.

to route orders to certain exchanges using a routing broker rather than routing an order directly.

The Exchange previously stated that from time to time, it may use non-affiliate third-party broker-dealers to provide outbound routing services (*i.e.*, third-party Routing Brokers).⁶ In those cases, orders are submitted to the third-party routing broker through the affiliated routing broker.

Under this proposal, the relevant rules would now expressly provide that the Exchange could use one or more third-party unaffiliated routing broker-dealers (“routing brokers”). Specifically, the Exchange proposes to amend Rule 1080(m)(iii)(A), which applies to options, to refer to such routing brokers. The Exchange proposes to similarly amend Rule 3315(b)(1) respecting equities. The Exchange proposes to further amend its rules with respect to certain policies and procedures. Specifically, Rules 1080(m)(iii)(C) and 3315(b)(8) currently provide that the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the Routing Facility, and any other entity, including any affiliate of the Routing Facility. The Exchange proposes to amend those rules to provide that, where there is a routing broker, the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange, the Routing Facility and any routing broker, and any other entity, including any affiliate of the routing broker (and if the routing broker or any of its

⁶ See Securities Exchange Act Release Nos. 68393 (December 10, 2012), 77 FR 74520 (December 14, 2012)(SR-Phlx-2012-134) at note 4; and 67654 (August 14, 2012), 77 FR 50187 (August 20, 2012)(SR-Phlx-2012-81) at note 6.

affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services).⁷ This way, this provision extends to the routing broker, if one is used.

In both the proposed equities and options rules, the Exchange proposes to provide that the Exchange may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority. This is similar to the existing provisions that do not permit the Exchange to be the designated examining authority for its affiliated routing brokers.⁸

The Exchange also proposes to expressly state in Rule 1080(m)(iii)(G) and Rule 3315(b)(1) that the Exchange will determine the logic that provides when, how, and where orders are routed away to other exchanges. In addition, the routing broker(s) cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order. This is consistent with, but more specific than, the current language that states that routing is performed under the direction of the Exchange.⁹

The Exchange may determine to use a different routing broker by product or by destination exchange, depending upon the costs and technological efficiencies involved.

⁷ This is substantially similar to NYSEArca Rule 6.96(a)(8).

⁸ See Phlx Rule 1080(m)(iii)(A) (which currently provides that NOS is a broker-dealer that is a member of a self-regulatory organization which is the designated examining authority for the broker-dealer) and Rule 3315(b)(4) (which currently provides that the designated examining authority for NES shall be a self-regulatory organization unaffiliated with the exchange of any of its affiliates). This is also substantially similar to NYSEArca Rule 6.96(a)(7).

⁹ This is based on NYSEArca Rule 6.96(a)(1)(A).

The proposal is intended to allow the Exchange to structure its routing arrangements accordingly. At a minimum, the Exchange anticipates using a routing broker to access certain markets where the Exchange finds that the costs of maintaining a membership (for NES and NOS) and/or the costs of connectivity and execution do not make sense in light of the number or types of orders the Exchange typically routes to that particular market. These costs necessarily determine the ultimate costs to the Exchange of routing to a market, and, in turn, affect how the Exchange chooses to recoup those costs through its own transaction fees.¹⁰ Sometimes, it will not make economic sense for NOS or NES to access an exchange directly. Accordingly, the Exchange intends to use a routing broker where the Exchange determines that it is appropriate. In addition to costs, the Exchange will also consider ease of connectivity and execution as well as general reliability in selecting a routing broker.

For several weeks, the Exchange has been working with the Financial Regulatory Authority (“FINRA”) and The Options Clearing Corporation (“OCC”) to secure the necessary approvals for NES to perform these functions. The Exchange now believes that those approvals will be complete in January. The Exchange seeks to complete this process and implement this proposal in January or February and will do so upon coordination of the necessary approvals.

b. Statutory Basis

¹⁰ For these reasons, today, where an order is ultimately executed, transaction fees for orders vary depending on the market. See Section V of the NASDAQ OMX PHLX Pricing Schedule.

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing an alternative routing arrangement. The proposal should remove impediments to and perfect the mechanism of a free and open market and a national market system by providing customer order protection and by facilitating trading at away exchanges so customer orders trade at the best market price. The proposal should also protect investors and the public interest by fostering compliance with the Options Order Protection and Locked/Crossed Market Plan. The Exchange also believes that the proposal to use NES rather than NOS for options routing is designed to promote just and equitable principles of trade and to protect investors and the public interest, by eliminating the costs and inefficiencies associated with operating a separate broker-dealer for options routing. In addition, the Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because there are specific protections pertaining to the routing broker in light of the potential conflict of interest where the member routing broker could have access to information regarding other members' orders or the routing of those orders. These protections include the

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

Exchange's control over all routing logic as well as the confidentiality of routing information.¹³

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal is pro-competitive because it enables broker-dealers other than NOS and NES to provide routing services to the Exchange, which has the potential to reduce the Exchange's costs of routing orders and, potentially, the fees the Exchange charges for routed orders. The proposal does not raise issues of intra-market competition, because the Exchange's decision to route through a particular routing broker would impact all participants equally.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)¹⁴ of the Act and Rule 19b-4(f)(6) thereunder¹⁵ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative

¹³ See proposed Rules 1080(m)(iii)(G) and 3315(b)(1).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The proposal does not significantly affect the protection of investors or the public interest, because it provides for the opportunity to use a routing broker, which has the potential to benefit investors, as explained above. It also changes which of the Exchange's affiliated broker-dealers will serve as the Routing Facility for options, which should also benefit investors by reducing costs. The proposal does not change whether an order is routed, but rather merely the mechanics of how it is routed. The proposal does not impose any significant burden on competition, as explained further above.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposal is substantially similar to NYSE ArcaRule 6.96(a) and NYSE MKT Rule 993NY(a), albeit structured a bit differently, including that those exchanges' rules

contemplate using both an affiliated as well as an unaffiliated routing broker.¹⁶ The aspect of the proposal that replaces NES for NOS as the options Routing Facility is also similar to NYSE Arca's arrangement, where Arca Securities, their affiliated broker-dealer, is able to route orders for both equities and options. The language regarding the designated examining authority in NYSEArca Rule 6.96(a)(7) is slightly different but not in a material way and generally provides for the same thing.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of proposed rule for publication in the Federal Register.
5. Text of proposed rule change

¹⁶ See Securities Exchange Act Release No. 67836 (September 12, 2012), 77 FR 57611 (September 18, 2012) at note 5.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2013-131)

January __, 2014

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Order Routing Provisions

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 31, 2013, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 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 use Nasdaq Execution Services, LLC (“NES”) as opposed to Nasdaq Options Services LLC (“NOS”) for outbound order routing, as explained further below. The Exchange also proposes to permit the Exchange to route equities and options orders through NES either directly or through a third party routing broker-dealer, as explained further below.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqomxphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 purpose of the proposal is to update the Exchange's rules to reflect the ability to route orders to other exchanges using either the Exchange's affiliated broker-dealer or a third party unaffiliated broker-dealer, which the Exchange may choose to use for efficiency and potential cost savings.

Today, the relevant Exchange rules provide that the Exchange shall route orders in options via Nasdaq Options Services LLC ("NOS") and in equities³ via Nasdaq Execution Services LLC ("NES"). Both NOS and NES are affiliates and member organizations of Phlx. As a result, certain conditions have been imposed on the existing routing arrangements.⁴

Replacing NOS with NES

The Exchange proposes to amend its rules to provide that it shall use NES for routing orders in options rather than NOS. The Exchange has determined to use NES for

³ The Exchange operates an equities market known as PSX.

⁴ See, e.g., Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26751 (June 3, 2009) (SR-Phlx-2009-32) at 26756.

outbound routing in options, in addition to equities. The Exchange originally set up its affiliated broker-dealers as two separate entities. Now, the Exchange believes that this is unnecessary and costly. Accordingly, pursuant to Rule 1080(m)(iii), NES will now be the outbound routing broker for Phlx options. As the new Routing Facility for options, NES will operate the same way as NOS currently does, in terms of routing options orders to destination options exchanges pursuant to Rule 1080(m).⁵ This is substantially similar to NYSEArca's use of its affiliate Archipelago Securities LLC for order routing in both equities and options.

Third-Party Routing Broker

The Exchange also proposes to codify in its rules the ability to use a third-party routing broker, rather than routing directly through NES, for both equities and options. Today, the Exchange has used a third-party routing broker in equities and is amending Rule 3315 to clarify this and incorporate the third-party routing broker expressly into that rule. Specifically, today, the Exchange routes equities orders to NES, which, in turn, sometimes routes directly to away markets; in addition, sometimes when the Exchange routes equities orders to NES today, NES routes those orders to a third-party routing broker.

In options, the Exchange currently routes options orders to NOS, which routes directly to away markets. The Exchange proposes to use NES, rather than NOS, as explained above, and to have NES route either directly to other options exchanges or to a

⁵ NOS also, with Commission approval, executes and reports the underlying security component of a Complex Order, pursuant to Rule 1080.08(h). NES will now perform this function and this paragraph will be amended accordingly. Rule 1080(n)(ii)(J) will be amended in a similar fashion.

third-party routing broker (which will, in turn, route to other options exchanges). The Exchange proposes to amend Rule 1080(m) accordingly.

Regardless of whether a third-party routing broker is used in either equities or options, all routing will go through NES, but the Exchange could determine to direct NES to route orders to certain exchanges using a routing broker rather than routing an order directly.

The Exchange previously stated that from time to time, it may use non-affiliate third-party broker-dealers to provide outbound routing services (*i.e.*, third-party Routing Brokers).⁶ In those cases, orders are submitted to the third-party routing broker through the affiliated routing broker.

Under this proposal, the relevant rules would now expressly provide that the Exchange could use one or more third-party unaffiliated routing broker-dealers (“routing brokers”). Specifically, the Exchange proposes to amend Rule 1080(m)(iii)(A), which applies to options, to refer to such routing brokers. The Exchange proposes to similarly amend Rule 3315(b)(1) respecting equities. The Exchange proposes to further amend its rules with respect to certain policies and procedures. Specifically, Rules 1080(m)(iii)(C) and 3315(b)(8) currently provide that the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the Routing Facility, and any other entity, including any affiliate of the Routing Facility. The Exchange proposes to amend those rules to provide that, where there is a routing broker, the

⁶ See Securities Exchange Act Release Nos. 68393 (December 10, 2012), 77 FR 74520 (December 14, 2012)(SR-Phlx-2012-134) at note 4; and 67654 (August 14, 2012), 77 FR 50187 (August 20, 2012)(SR-Phlx-2012-81) at note 6.

Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange, the Routing Facility and any routing broker, and any other entity, including any affiliate of the routing broker (and if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services).⁷ This way, this provision extends to the routing broker, if one is used.

In both the proposed equities and options rules, the Exchange proposes to provide that the Exchange may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority. This is similar to the existing provisions that do not permit the Exchange to be the designated examining authority for its affiliated routing brokers.⁸

The Exchange also proposes to expressly state in Rule 1080(m)(iii)(G) and Rule 3315(b)(1) that the Exchange will determine the logic that provides when, how, and where orders are routed away to other exchanges. In addition, the routing broker(s) cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order. This is consistent with, but

⁷ This is substantially similar to NYSEArca Rule 6.96(a)(8).

⁸ See Phlx Rule 1080(m)(iii)(A) (which currently provides that NOS is a broker-dealer that is a member of a self-regulatory organization which is the designated examining authority for the broker-dealer) and Rule 3315(b)(4) (which currently provides that the designated examining authority for NES shall be a self-regulatory organization unaffiliated with the exchange of any of its affiliates). This is also substantially similar to NYSEArca Rule 6.96(a)(7).

more specific than, the current language that states that routing is performed under the direction of the Exchange.⁹

The Exchange may determine to use a different routing broker by product or by destination exchange, depending upon the costs and technological efficiencies involved. The proposal is intended to allow the Exchange to structure its routing arrangements accordingly. At a minimum, the Exchange anticipates using a routing broker to access certain markets where the Exchange finds that the costs of maintaining a membership (for NES and NOS) and/or the costs of connectivity and execution do not make sense in light of the number or types of orders the Exchange typically routes to that particular market. These costs necessarily determine the ultimate costs to the Exchange of routing to a market, and, in turn, affect how the Exchange chooses to recoup those costs through its own transaction fees.¹⁰ Sometimes, it will not make economic sense for NOS or NES to access an exchange directly. Accordingly, the Exchange intends to use a routing broker where the Exchange determines that it is appropriate. In addition to costs, the Exchange will also consider ease of connectivity and execution as well as general reliability in selecting a routing broker.

For several weeks, the Exchange has been working with the Financial Regulatory Authority (“FINRA”) and The Options Clearing Corporation (“OCC”) to secure the necessary approvals for NES to perform these functions. The Exchange now believes that those approvals will be complete in January. The Exchange seeks to complete this

⁹ This is based on NYSEArca Rule 6.96(a)(1)(A).

¹⁰ For these reasons, today, where an order is ultimately executed, transaction fees for orders vary depending on the market. See Section V of the NASDAQ OMX PHLX Pricing Schedule.

process and implement this proposal in January or February and will do so upon coordination of the necessary approvals.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing an alternative routing arrangement. The proposal should remove impediments to and perfect the mechanism of a free and open market and a national market system by providing customer order protection and by facilitating trading at away exchanges so customer orders trade at the best market price. The proposal should also protect investors and the public interest by fostering compliance with the Options Order Protection and Locked/Crossed Market Plan. The Exchange also believes that the proposal to use NES rather than NOS for options routing is designed to promote just and equitable principles of trade and to protect investors and the public interest, by eliminating the costs and inefficiencies associated with operating a separate broker-dealer for options routing. In addition, the Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because there are specific protections pertaining to the routing broker in light of the potential conflict of interest where the member routing broker could have access to information regarding other

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

members' orders or the routing of those orders. These protections include the Exchange's control over all routing logic as well as the confidentiality of routing information.¹³

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposal is pro-competitive because it enables broker-dealers other than NOS and NES to provide routing services to the Exchange, which has the potential to reduce the Exchange's costs of routing orders and, potentially, the fees the Exchange charges for routed orders. The proposal does not raise issues of intra-market competition, because the Exchange's decision to route through a particular routing broker would impact all participants equally.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant

¹³ See proposed Rules 1080(m)(iii)(G) and 3315(b)(1).

to Section 19(b)(3)(A)(ii) of the Act¹⁴ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁵

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2013-131 on the subject line.

¹⁴ 15 U.S.C. 78s(b)(3)(a)(ii).

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

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2013-131. This file number should be included on the subject line if e-mail 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 Web site

(<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2013-131 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Kevin M O'Neill
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).

Exhibit 5

* * * * *

Rule 1080. Phlx XL and Phlx XLII

(a) – (l) No change.

(m) Away Markets and Order Routing

No change.

(i) – (ii) No change.

(iii) (A) The Exchange shall route orders in options via [Nasdaq Options Services LLC ("NOS")] Nasdaq Execution Services, LLC ("NES"), a broker-dealer that is a member of an unaffiliated SRO which is the designated examining authority for the broker-dealer. [NOS] NES serves as the Routing Facility of the Exchange (the "Routing Facility"). The sole use of the Routing Facility by the Phlx XL II system will be to route orders in options listed and open for trading on the Phlx XL II system to away markets either directly or through one or more third-party unaffiliated routing broker-dealers pursuant to Exchange rules on behalf of the Exchange and, in addition, where one component of a Complex Order is the underlying security, to execute and report such component otherwise than on the Exchange, pursuant to Rule 1080.08(h). The Routing Facility is subject to regulation as a facility of the Exchange, including the requirement to file proposed rule changes under Section 19 of the Securities Exchange Act of 1934, as amended.

(B) Use of [NOS] NES to route orders to other market centers is optional. Parties that do not desire to use [NOS] NES must designate orders as not available for routing (a Do Not Route Order, as described in sub-paragraph (iv)(A) below).

(C) The Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between: the Exchange and the Routing Facility, and any other entity, including any affiliate of the Routing Facility; or, where there is a routing broker, the Exchange, the Routing Facility and any routing broker, and any other entity, including any affiliate of the routing broker (and if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services).

(D) No change.

(E) *Market Access*. In addition to the Exchange Rules regarding routing to away trading centers, [NASDAQ Options Services] NES, as defined above, has, pursuant to Rule 15c3-5 under the Act, implemented certain tests designed to mitigate risks associated with providing the Exchange's Members with access to such away trading centers. Pursuant to the policies

and procedures developed by [NASDAQ Options Services] NES to comply with Rule 15c3-5, if an order or series of orders are deemed to be violative of applicable pre-trade requirements of Rule 15c3-5, the order will be rejected prior to routing and/or [NOS] NES will seek to cancel any orders that have been routed.

(F) The Exchange and NES may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority.

(G) The Exchange will determine the logic that provides when, how, and where orders are routed away to other exchanges. Except as provided in subparagraph (E) above, the routing broker(s) cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order.

(iv) No change.

(v) Cancellation of Orders and Error Account

(1) The Exchange or [Nasdaq Options Services LLC] NES may cancel orders as either deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, [Nasdaq Options Services LLC] NES, or a routing destination. The Exchange or [Nasdaq Options Services LLC] NES shall provide notice of the cancellation to affected member organizations as soon as practicable.

(2) [Nasdaq Options Services LLC] NES shall maintain an error account for the purpose of addressing positions that result from a technical or systems issue at [Nasdaq Options Services LLC] NES, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders ("error positions").

(A) For purposes of this paragraph (v), an error position shall not include any position that results from an order submitted by a member organization to the Exchange that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis.

(B) Except as provided in this paragraph (v)(2)(C), [Nasdaq Options Services LLC] NES shall not (i) accept any positions in its error account from an account of a member organization, or (ii) permit any member organization to transfer any positions from the member organization's account to [Nasdaq Options Services LLC's] NES' error account.

(C) If a technical or systems issue results in the Exchange not having valid clearing instructions for a member organization to a trade, [Nasdaq Options Services LLC] NES may assume that member organization's side of the trade so that the trade can be automatically processed for clearance and settlement on a locked-in basis.

(3) In connection with a particular technical or systems issue, [Nasdaq Options Services LLC] NES or the Exchange shall either (i) assign all resulting error positions to member

organizations in accordance with subparagraph (A) below, or (ii) have all resulting error positions liquidated in accordance with subparagraph (B) below. Any determination to assign or liquidate error positions, as well as any resulting assignments, shall be made in a nondiscriminatory fashion.

(A) [Nasdaq Options Services LLC] NES or the Exchange shall assign all error positions resulting from a particular technical or systems issue to the member organizations affected by that technical or systems issue if [Nasdaq Options Services LLC] NES or the Exchange:

- (i) determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the member organizations affected by that technical or systems issue;
- (ii) determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the member organizations affected by that technical or systems issue; and
- (iii) has not determined to cancel all orders affected by that technical or systems issue in accordance with subparagraph (v)(1) above.

(B) If [Nasdaq Options Services LLC] NES or the Exchange is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected member organizations in accordance with subparagraph (A) above, or if [Nasdaq Options Services LLC] NES or the Exchange determines to cancel all orders affected by the technical or systems issue in accordance with subparagraph (v)(1) above, then [Nasdaq Options Services LLC] NES shall liquidate the error positions as soon as practicable. [Nasdaq Options Services LLC] NES shall:

- (i) provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading; and
- (ii) establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and [Nasdaq Options Services LLC] NES /the Exchange associated with the liquidation of the error positions.

(4) [Nasdaq Options Services LLC] NES and the Exchange shall make and keep records to document all determinations to treat positions as error positions and all determinations for the assignment of error positions to member organizations or the liquidation of error positions, as well as records associated with the liquidation of error positions through the third-party broker-dealer.

(n) **Price Improvement XL ("PIXL")**

A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity ("PIXL Order") against principal interest or against any other order (except as provided in sub-paragraph (n)(i)(F) below) it represents as agent (an "Initiating Order") provided it submits the PIXL Order for electronic execution into the PIXL Auction ("Auction") pursuant to this Rule. The contract size specified in Rule 1080(n) as applicable to PIXL Orders shall apply to Mini Options.

- (i) No change.
- (ii) Auction Process. Only one Auction may be conducted at a time in any given series or strategy. Once commenced, an Auction may not be cancelled and shall proceed as follows:

- (A) – (I) No change.

- (J) Complex PIXL Orders with stock/ETF components.

- (1) Member organizations may only submit Complex PIXL Orders, Initiating Orders, Complex Orders, and/or PAN responses with a stock/ETF component if such orders/responses comply with the Qualified Contingent Trade Exemption from Rule 611(a) of Regulation NMS. Member organizations submitting such orders with a stock/ETF component represent that such orders comply with the Qualified Contingent Trade Exemption. Members of FINRA or the NASDAQ Stock Market ("NASDAQ") are required to have a Uniform Service Bureau/Executing Broker Agreement ("AGU") with Nasdaq [Options] Execution Services, LLC ("NES") in order to trade orders containing a stock/ETF component; firms that are not members of FINRA or NASDAQ are required to have a Qualified Special Representative ("QSR") arrangement with NES [Nasdaq Options Services LLC ("NOS")] in order to trade orders containing a stock/ETF component.

- (2) Where one component of a Complex PIXL Order, Initiating Order, Complex Order, or PAN response is the underlying security, the Exchange shall electronically communicate the underlying security component of a Complex PIXL Order (together with the Initiating Order, Complex Order, or PAN response, as applicable) to NES [NOS], its designated broker-dealer, for immediate execution. Such execution and reporting will occur otherwise than on the Exchange and will be handled by NES [NOS] pursuant to applicable rules regarding equity trading.

- (3) When the short sale price test in Rule 201 of Regulation SHO is triggered for a covered security, NES [NOS] will not execute a short sale order in the underlying covered security component of a Complex PIXL Order, Initiating Order, Complex Order, or PAN response if the price is equal to or below the current national best bid. However, NES [NOS] will execute a short sale order in the underlying covered security component of a Complex PIXL Order, Initiating Order, Complex Order, or PAN response if such order is marked "short exempt," regardless of whether it is at a price that is equal to or below the current national best bid. If NES [NOS] cannot execute the

underlying covered security component of a Complex PIXL Order, Initiating Order, Complex Order, or PAN response in accordance with Rule 201 of Regulation SHO, the Exchange will cancel back the Complex PIXL Order, Initiating Order, Complex Order, and/or PAN response to the entering member organization. For purposes of this paragraph, the term "covered security" shall have the same meaning as in Rule 201(a)(1) of Regulation SHO.

(iii) – (vii) No change.

(o) – (p) No change.

...Commentary:

.01 - .07 No change

.08 Complex Orders on Phlx XL.

(a) – (g) No change.

(h) Where one component of a Complex Order is the underlying security, the Exchange shall electronically communicate the underlying security component of a Complex Order to Nasdaq Execution [Options] Services, LLC ("N[O]ES"), its designated broker-dealer, for immediate execution. Such execution and reporting will occur otherwise than on the Exchange and will be handled by N[O]ES pursuant to applicable rules regarding equity trading. The execution price must be within the high-low range for the day in that stock at the time the Complex Order is processed and within a certain price from the current market, which the Exchange will establish in an Options Trader Alert. If the stock price is not within these parameters, the Complex Order is not executable.

When the short sale price test in Rule 201 of Regulation SHO is triggered for a covered security, N[O]ES will not execute a short sale order in the underlying covered security component of a Complex Order if the price is equal to or below the current national best bid. However, N[O]ES will execute a short sale order in the underlying covered security component of a Complex Order if such order is marked "short exempt," regardless of whether it is at a price that is equal to or below the current national best bid. If N[O]ES cannot execute the underlying covered security component of a Complex Order in accordance with Rule 201 of Regulation SHO, the Exchange will cancel back the Complex Order to the entering member organization. For purposes of this paragraph, the term "covered security" shall have the same meaning as in Rule 201(a)(1) of Regulation SHO.

(i) No change.

.09 No change.

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Rule 3315. Order Routing

(a) No change.

(b) Routing Broker

- (1) All routing by the System shall be performed by the Exchange's affiliated broker-dealer, Nasdaq Execution Services, LLC, which, in turn, shall route orders to other market centers either directly or through one or more third-party unaffiliated routing broker-dealers as directed by the Exchange. The Exchange will determine the logic that provides when, how, and where orders are routed away to other exchanges. Except as provided in subparagraph (c) below, the routing broker(s) cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order.
- (2) Nasdaq Execution Services, LLC will not engage in any business other than: (a) as an outbound router for the Exchange and (b) any other activities it may engage in as approved by the Commission.
- (3) Nasdaq Execution Services, LLC shall operate as a facility, as defined in Section 3(a)(2) of the Act, of the Exchange.
- (4) For purposes of SEC Rule 17d-1, the designated examining authority of Nasdaq Execution Services, LLC shall be a self-regulatory organization unaffiliated with the Exchange or any of its affiliates. The Exchange may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority.
- (5) The Exchange shall be responsible for filing with the Securities and Exchange Commission rule changes related to the operation of, and fees for services provided by, Nasdaq Execution Services, LLC and Nasdaq Execution Services, LLC shall be subject to exchange non-discrimination requirements.
- (6) The books, records, premises, officers, agents, directors and employees of Nasdaq Execution Services, LLC as a facility of the Exchange shall be deemed to be the books, records, premises, officers, agents, directors and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Act. The books and records of Nasdaq Execution Services, LLC as a facility of the Exchange shall be subject at all times to inspection and copying by the Commission.
- (7) Use of Nasdaq Execution Services, LLC to route orders to other market centers will be optional. Parties that do not desire to use Nasdaq Execution Services, LLC must enter orders into the System as immediate-or-cancel orders or any other order type available through the System that is ineligible for routing.
- (8) Nasdaq Execution Services, LLC shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including Nasdaq

Execution Services, LLC as its routing facility) and any other entity; or, where there is a routing broker, the Exchange, the Routing Facility and any routing broker, and any other entity, including any affiliate of the routing broker (and if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services).

(c) – (d) No change.

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