

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 19		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2016 - * 120	
Amendment No. (req. for Amendments *) 1					
Filing by NASDAQ PHLX LLC					
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input type="checkbox"/>		Amendment * <input checked="" type="checkbox"/>		Withdrawal <input type="checkbox"/>	
Section 19(b)(2) * <input checked="" type="checkbox"/>		Section 19(b)(3)(A) * <input type="checkbox"/>		Section 19(b)(3)(B) * <input type="checkbox"/>	
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 type="checkbox"/> 19b-4(f)(6)		Rule	
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"/>			
<b>Description</b>					
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).					
<input type="text" value="Proposed rule change to permit Phlx to accept inbound options orders routed by Nasdaq Execution Services LLC from the ISE Exchanges."/>					
<b>Contact Information</b>					
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="Angela"/>		Last Name * <input type="text" value="Dunn"/>			
Title * <input type="text" value="Principal Associate General Counsel"/>					
E-mail * <input type="text" value="Angela.Dunn@nasdaq.com"/>					
Telephone * <input type="text" value="(215) 496-5692"/>		Fax <input type="text"/>			
<b>Signature</b>					
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="12/20/2016"/>		<input type="text" value="Executive Vice President and General Counsel"/>			
By <input type="text" value="Edward S. Knight"/>		<input type="text" value="edward.knight@nasdaq.com"/>			
(Name *)					
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 \***

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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 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 Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> Nasdaq Phlx LLC (“Phlx” or “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to permit Phlx to accept inbound options orders routed by Nasdaq Execution Services LLC (“NES”) from the International Securities Exchange, LLC (“ISE”) ISE Gemini, LLC (“ISE Gemini”) and ISE Mercury, LLC (“ISE Mercury”) (collectively “ISE Exchanges”).

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on November 10, 2016. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Angela Saccomandi Dunn  
Principal Associate General Counsel  
Nasdaq, Inc.  
215-496-5692

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

<sup>2</sup> 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

In conjunction with the ISE Exchanges seeking approval to provide outbound routing services to all options markets using an affiliated routing broker, NES,<sup>3</sup> Phlx proposes that NES be permitted to route orders from the ISE Exchanges to Phlx, subject to certain limitations and conditions, as described below.

NES is a broker-dealer and member of The Nasdaq Options Market LLC ("NOM"), Nasdaq BX, Inc. ("BX") and Phlx (collectively "Nasdaq Exchanges"). NES provides all routing functions for the Nasdaq Exchanges. The Nasdaq Exchanges and NES are permitted affiliates.<sup>4</sup> Accordingly, the affiliate relationship between Phlx and NES, its member, raises the issue of an exchange's affiliation with a member of such exchange. Specifically, in connection with prior filings, the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and potential conflicts of interest between an exchange's self-regulatory obligations and its commercial interests.<sup>5</sup>

Specifically, in connection with prior filings, the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for

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<sup>3</sup> See SR-ISE-2016-27, SR-ISEGemini-2016-16 and SR-ISE-Mercury-2016-22 (not yet published).

<sup>4</sup> See Phlx Rule 985, Nasdaq Rule 2160 and BX Rule 2140.

<sup>5</sup> See Securities Exchange Act Release Nos. 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008) (SR-NASDAQ-2008-098); and 62736 (August 17, 2010), 75 FR 51861 (August 23, 2010) (SR-NASDAQ-2010-100). See also Securities Exchange Act Release No. 58135 (July 10, 2008), 73 FR 40898 (July 16, 2008)(SR-NASDAQ-2008-061)(Permitting NOS to be affiliated with Phlx).

unfair competitive advantage and potential conflicts of interest between an exchange's self-regulatory obligations and its commercial interests.<sup>6</sup> The Nasdaq Exchanges received approval from the Commission to permit NES to become a member of these three markets subject to certain limitations and conditions in order to perform certain routing and other functions, respectively.<sup>7</sup> Also recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Nasdaq Exchanges previously proposed, and the Commission approved,<sup>8</sup> NES's affiliation with

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<sup>6</sup> Securities Exchange Act Release Nos. 71416 (January 28, 2014), 79 FR 6244 (February 3, 2014) (SR-Phlx-2014-05); 71419 (January 28, 2014), 79 FR 6247 (February 3, 2014) (SR-NASDAQ-2014-007); and 714121 (January 28, 2014), 79 FR 6264 (February 3, 2014) (SR-BX-2014-003).

<sup>7</sup> See Securities Exchange Act Release Nos. 59721 (April 7, 2009), 74 FR 17245 (April 14, 2009) (SR-Phlx-2009-32); 59779 (April 16, 2009) 74 FR 18600 (April 23, 2009) (SR-Phlx-2009-32, Amendment No. 1) notice of filing of proposed rule change relating to enhanced electronic trading platform for options); 61667 (March 5, 2010), 75 FR 11964 (March 12, 2010)(SR-Phlx-2010-36)(notice of filing and immediate effectiveness of proposed rule changes to establish procedures to prevent information advantages resulting from the affiliation between Phlx and NES); and 71416 (January 28, 2014), 79 FR 6244 (February 3, 2014) (SR-Phlx-2014-05)(notice of filing and immediate effectiveness of proposed rule change to inbound routing of options orders). Nasdaq Options Services was the affiliated broker-dealer prior to a rule change to utilize NES, another affiliated broker-dealer of Nasdaq. See also Securities Exchange Act Release Nos. 63769 (January 25, 2011), 76 FR 5423 (January 31, 2011) (SR-BX-2011-003); 63859 (February 7, 2011), 76 FR 8391 (February 14, 2011) (SR-BX-2011-007) (notice of filing of proposed rule change relating to permanent approval of the BX and NES inbound routing relationship); 71420 (January 28, 2014), 79 FR 6256 (February 3, 2014)(SR-BX-2014-004)(notice of filing and immediate effectiveness of proposed rule change to inbound routing). See also Securities Exchange Act Release Nos. 65554 (October 13, 2011), 76 FR 65311 (October 20, 2011)(SR-NASDAQ-2011-142); 71418 (January 28, 2014), 79 FR 6262 (February 3, 2014)(SR-NASDAQ-2014-008)(notice of filing and immediate effectiveness of proposed rule change to inbound routing).

<sup>8</sup> Id.

the Nasdaq Exchanges to permit the Exchange to accept inbound orders that NES routes in its capacity as a facility from other Nasdaq Exchanges, subject to the certain limitations and conditions. Phlx now proposes to permit Phlx to accept inbound options orders that NES routes in its capacity as a facility of the ISE Exchanges, subject to the following limitations and conditions:<sup>9</sup>

- First, the Exchange and FINRA maintain a Regulatory Services Agreement (“RSA”), as well as an agreement pursuant to Rule 17d–2 under the Act (“17d–2 Agreement”).<sup>10</sup> Pursuant to the RSA and the 17d–2 Agreement, FINRA is allocated regulatory responsibilities to review NES’s compliance with certain Exchange rules.<sup>11</sup> Pursuant to the RSA, however, Phlx retains ultimate responsibility for enforcing its rules with respect to NES.
- Second, FINRA monitors NES for compliance with the Exchange’s trading rules, and collects and maintains certain related information.<sup>12</sup>

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<sup>9</sup> The Exchange notes that similar filings are proposed for the Nasdaq and BX markets. See SR-Nasdaq-2016-169 and SR-BX-2016-068 (not published).

<sup>10</sup> 17 CFR 240.17d-2. FINRA reviews NES’ compliance for certain common rules. The RSA with FINRA specifies the types of business activities that NES may undertake and it also indicates the obligations to which NES is subject under the RSA. Among other things, NES must maintain a certain amount of net capital pursuant to SEC Rule 15c3-1(a)(1)(ii) and operate pursuant to SEC Rule 15c3-3(k)(2)(ii). NES is permitted to route orders in options to the appropriate market center for execution in accordance with member order and requirements.

<sup>11</sup> NES is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

<sup>12</sup> Pursuant to the RSA, both FINRA and Phlx collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of BX and NOM routing orders to Phlx) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The

- Third, FINRA provides a report to the Exchange's chief regulatory officer ("CRO"), on a quarterly basis, that: (i) quantifies all alerts (of which the Exchange or FINRA is aware) that identify NES as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NES as a participant that has potentially violated Commission or Exchange rules.
- Fourth, Phlx has in place Phlx Rule 985(c)(2) which requires Nasdaq, Inc., as the holding company owning both the Exchange and NES, to establish and maintain procedures and internal controls reasonably designed to ensure that NES does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange.<sup>13</sup>

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Exchange and FINRA retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. Pursuant to the RSA, the Exchange and FINRA would be required to perform these activities with respect to NES acting in its capacity as a facility of each of the affiliated entities routing orders to Phlx.

<sup>13</sup> See Securities Exchange Act Release Nos. 59721 (April 7, 2009), 74 FR 17245 (April 14, 2009) (SR-Phlx-2009-32); 59779 (April 16, 2009) 74 FR 18600 (April 23, 2009) (SR-Phlx-2009-32, Amendment No. 1) notice of filing of proposed rule change relating to enhanced electronic trading platform for options); 61667 (March 5, 2010), 75 FR 11964 (March 12, 2010)(SR-Phlx-2010-36)(notice of filing and immediate effectiveness of proposed rule changes to establish procedures to prevent information advantages resulting from the affiliation between Phlx and NES); and 71416 (January 28, 2014), 79 FR 6244 (February 3,

The Exchange has met all the above-listed conditions in connection with NES routing in its capacity as a facility of BX and NOM. By meeting the above conditions, the Exchange has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, as well as demonstrate that NES cannot use any information advantage it may have because of its affiliation with the Exchange. Because the Exchange has met all the above-listed conditions, it now seeks to permit an inbound routing relationship with the ISE Exchanges pursuant to the same conditions. The Exchange will continue to comply with the four conditions stated above.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>14</sup> in general, and with Sections 6(b)(5) of the Act,<sup>15</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, because the proposed rule change will allow the Exchange to continue to receive inbound orders from NES, acting in its capacity as a facility of BX and NOM, in a manner consistent with

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2014) (SR-Phlx-2014-05)(notice of filing and immediate effectiveness of proposed rule change to inbound routing of options orders). Nasdaq Options Services was the affiliated broker-dealer prior to a rule change to utilize NES, another affiliated broker-dealer of Nasdaq.

<sup>14</sup> 15 U.S.C. 78f.

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



prior approvals and established protections and will further be permitted to receive inbound orders from the ISE Exchanges, for which NES will also act in its capacity as a facility of those markets. The Exchange believes that the proposed conditions establish mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, as well as ensure that NES cannot use any information it may have because of its affiliation with the Exchange, or affiliation with other Nasdaq Exchanges or ISE Exchanges, to its advantage.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Permitting Phlx to receive inbound orders from the ISE Exchanges does not create any issues of intra-market competition because it involves inbound routing from affiliated markets. Nor does it result in a burden on competition among exchanges, because there are many competing options exchanges that provide routing services, including through an affiliate.

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

Written comments were neither solicited nor 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)

Not applicable.

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

The proposal is similar to other proposals for permanent approval of inbound routing from affiliates.<sup>16</sup>

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

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<sup>16</sup> See note 5 above.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2016-120)

December \_\_, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed Rule Change to Permit Phlx to Accept Inbound Options Orders Routed by Nasdaq Execution Services LLC

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 December 20, 2016, NASDAQ 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 permit Phlx to accept inbound options orders routed by Nasdaq Execution Services LLC (“NES”) from the International Securities Exchange, LLC (“ISE”) ISE Gemini, LLC (“ISE Gemini”) and ISE Mercury, LLC (“ISE Mercury”) (collectively “ISE Exchanges”).

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

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

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

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

In conjunction with the ISE Exchanges seeking approval to provide outbound routing services to all options markets using an affiliated routing broker, NES,<sup>3</sup> Phlx proposes that NES be permitted to route orders from the ISE Exchanges to Phlx, subject to certain limitations and conditions, as described below.

NES is a broker-dealer and member of The Nasdaq Options Market LLC (“NOM”), Nasdaq BX, Inc. (“BX”) and Phlx (collectively “Nasdaq Exchanges”). NES provides all routing functions for the Nasdaq Exchanges. The Nasdaq Exchanges and NES are permitted affiliates.<sup>4</sup> Accordingly, the affiliate relationship between Phlx and NES, its member, raises the issue of an exchange’s affiliation with a member of such exchange. Specifically, in connection with prior filings, the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and potential conflicts of interest between an exchange’s self-regulatory obligations and its commercial interests.<sup>5</sup>

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<sup>3</sup> See SR-ISE-2016-27, SR-ISEGemini-2016-16 and SR-ISE-Mercury-2016-22 (not yet published).

<sup>4</sup> See Phlx Rule 985, Nasdaq Rule 2160 and BX Rule 2140.

<sup>5</sup> See Securities Exchange Act Release Nos. 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008) (SR-NASDAQ-2008-098); and 62736 (August 17, 2010), 75 FR 51861 (August 23, 2010) (SR-NASDAQ-2010-100). See also Securities Exchange Act Release No. 58135 (July 10, 2008), 73 FR 40898 (July 16, 2008)(SR-NASDAQ-2008-061)(Permitting NOS to be affiliated with Phlx).

Specifically, in connection with prior filings, the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and potential conflicts of interest between an exchange's self-regulatory obligations and its commercial interests.<sup>6</sup> The Nasdaq Exchanges received approval from the Commission to permit NES to become a member of these three markets subject to certain limitations and conditions in order to perform certain routing and other functions, respectively.<sup>7</sup> Also recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Nasdaq

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<sup>6</sup> Securities Exchange Act Release Nos. 71416 (January 28, 2014), 79 FR 6244 (February 3, 2014) (SR-Phlx-2014-05); 71419 (January 28, 2014), 79 FR 6247 (February 3, 2014) (SR-NASDAQ-2014-007); and 714121 (January 28, 2014), 79 FR 6264 (February 3, 2014) (SR-BX-2014-003).

<sup>7</sup> See Securities Exchange Act Release Nos. 59721 (April 7, 2009), 74 FR 17245 (April 14, 2009) (SR-Phlx-2009-32); 59779 (April 16, 2009) 74 FR 18600 (April 23, 2009) (SR-Phlx-2009-32, Amendment No. 1) notice of filing of proposed rule change relating to enhanced electronic trading platform for options); 61667 (March 5, 2010), 75 FR 11964 (March 12, 2010)(SR-Phlx-2010-36)(notice of filing and immediate effectiveness of proposed rule changes to establish procedures to prevent information advantages resulting from the affiliation between Phlx and NES); and 71416 (January 28, 2014), 79 FR 6244 (February 3, 2014) (SR-Phlx-2014-05)(notice of filing and immediate effectiveness of proposed rule change to inbound routing of options orders). Nasdaq Options Services was the affiliated broker-dealer prior to a rule change to utilize NES, another affiliated broker-dealer of Nasdaq. See also Securities Exchange Act Release Nos. 63769 (January 25, 2011), 76 FR 5423 (January 31, 2011) (SR-BX-2011-003); 63859 (February 7, 2011), 76 FR 8391 (February 14, 2011) (SR-BX-2011-007) (notice of filing of proposed rule change relating to permanent approval of the BX and NES inbound routing relationship); 71420 (January 28, 2014), 79 FR 6256 (February 3, 2014)(SR-BX-2014-004)(notice of filing and immediate effectiveness of proposed rule change to inbound routing). See also Securities Exchange Act Release Nos. 65554 (October 13, 2011), 76 FR 65311 (October 20, 2011)(SR-NASDAQ-2011-142); 71418 (January 28, 2014), 79 FR 6262 (February 3, 2014)(SR-NASDAQ-2014-008)(notice of filing and immediate effectiveness of proposed rule change to inbound routing).

Exchanges previously proposed, and the Commission approved,<sup>8</sup> NES's affiliation with the Nasdaq Exchanges to permit the Exchange to accept inbound orders that NES routes in its capacity as a facility from other Nasdaq Exchanges, subject to the certain limitations and conditions. Phlx now proposes to permit Phlx to accept inbound options orders that NES routes in its capacity as a facility of the ISE Exchanges, subject to the following limitations and conditions:<sup>9</sup>

- First, the Exchange and FINRA maintain a Regulatory Services Agreement (“RSA”), as well as an agreement pursuant to Rule 17d-2 under the Act (“17d-2 Agreement”).<sup>10</sup> Pursuant to the RSA and the 17d-2 Agreement, FINRA is allocated regulatory responsibilities to review NES's compliance with certain Exchange rules.<sup>11</sup> Pursuant to the RSA, however, Phlx retains ultimate responsibility for enforcing its rules with respect to NES.

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<sup>8</sup> Id.

<sup>9</sup> The Exchange notes that similar filings are proposed for the Nasdaq and BX markets. See SR-Nasdaq-2016-169 and SR-BX-2016-068 (not published).

<sup>10</sup> 17 CFR 240.17d-2. FINRA reviews NES' compliance for certain common rules. The RSA with FINRA specifies the types of business activities that NES may undertake and it also indicates the obligations to which NES is subject under the RSA. Among other things, NES must maintain a certain amount of net capital pursuant to SEC Rule 15c3-1(a)(1)(ii) and operate pursuant to SEC Rule 15c3-3(k)(2)(ii). NES is permitted to route orders in options to the appropriate market center for execution in accordance with member order and requirements.

<sup>11</sup> NES is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

- Second, FINRA monitors NES for compliance with the Exchange's trading rules, and collects and maintains certain related information.<sup>12</sup>
- Third, FINRA provides a report to the Exchange's chief regulatory officer ("CRO"), on a quarterly basis, that: (i) quantifies all alerts (of which the Exchange or FINRA is aware) that identify NES as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NES as a participant that has potentially violated Commission or Exchange rules.
- Fourth, Phlx has in place Phlx Rule 985(c)(2) which requires Nasdaq, Inc., as the holding company owning both the Exchange and NES, to establish and maintain procedures and internal controls reasonably designed to ensure that NES does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated

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<sup>12</sup> Pursuant to the RSA, both FINRA and Phlx collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of BX and NOM routing orders to Phlx) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. Pursuant to the RSA, the Exchange and FINRA would be required to perform these activities with respect to NES acting in its capacity as a facility of each of the affiliated entities routing orders to Phlx.

Exchange members, in connection with the provision of inbound order routing to the Exchange.<sup>13</sup>

The Exchange has met all the above-listed conditions in connection with NES routing in its capacity as a facility of BX and NOM. By meeting the above conditions, the Exchange has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, as well as demonstrate that NES cannot use any information advantage it may have because of its affiliation with the Exchange. Because the Exchange has met all the above-listed conditions, it now seeks to permit an inbound routing relationship with the ISE Exchanges pursuant to the same conditions. The Exchange will continue to comply with the four conditions stated above.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>14</sup> in general, and with Sections 6(b)(5) of the Act,<sup>15</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and

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<sup>13</sup> See Securities Exchange Act Release Nos. 59721 (April 7, 2009), 74 FR 17245 (April 14, 2009) (SR-Phlx-2009-32); 59779 (April 16, 2009) 74 FR 18600 (April 23, 2009) (SR-Phlx-2009-32, Amendment No. 1) notice of filing of proposed rule change relating to enhanced electronic trading platform for options); 61667 (March 5, 2010), 75 FR 11964 (March 12, 2010)(SR-Phlx-2010-36)(notice of filing and immediate effectiveness of proposed rule changes to establish procedures to prevent information advantages resulting from the affiliation between Phlx and NES); and 71416 (January 28, 2014), 79 FR 6244 (February 3, 2014) (SR-Phlx-2014-05)(notice of filing and immediate effectiveness of proposed rule change to inbound routing of options orders). Nasdaq Options Services was the affiliated broker-dealer prior to a rule change to utilize NES, another affiliated broker-dealer of Nasdaq.

<sup>14</sup> 15 U.S.C. 78f.

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



coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, because the proposed rule change will allow the Exchange to continue to receive inbound orders from NES, acting in its capacity as a facility of BX and NOM, in a manner consistent with prior approvals and established protections and will further be permitted to receive inbound orders from the ISE Exchanges, for which NES will also act in its capacity as a facility of those markets. The Exchange believes that the proposed conditions establish mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, as well as ensure that NES cannot use any information it may have because of its affiliation with the Exchange, or affiliation with other Nasdaq Exchanges or ISE Exchanges, to its advantage.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Permitting Phlx to receive inbound orders from the ISE Exchanges does not create any issues of intra-market competition because it involves inbound routing from affiliated markets. Nor does it result in a burden on competition among exchanges, because there are many competing options exchanges that provide routing services, including through an affiliate.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date 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 shall: (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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2016-120 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2016-120. 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-2016-120 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.<sup>16</sup>

Robert W. Errett  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).