impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because providing VCCs satisfies User demand for an alternative to co-location.

The Exchange believes that revising the Price List to provide a more detailed description of the Access and Connectivity available to Users would make such descriptions more accessible and transparent, thereby providing market participants with clarity as to what Access and Connectivity is available to them and what the related costs are, thereby enhancing competition by ensuring that all Users have access to the same information regarding Access and Connectivity.

Finally, the Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange’s data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended by Amendment Nos. 1, 2, and 3 is consistent with the Exchange 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 email to rule-comments@sec.gov. Please include File No. SR–NYSE–2016–45 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 No. SR–NYSE–2016–45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet 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 Web site 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 such 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 No. SR–NYSE–2016–45, and should be submitted on or before January 19, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. 34

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79660; File No. SR-Phlx-2016–120]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Permit Phlx To Accept Inbound Options Orders Routed by Nasdaq Execution Services LLC

December 22, 2016.

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 9, 2016, NASDAQ PHLX LLC (“Phlx” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change. On December 20, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the original filing in its entirety. The proposed rule change, as modified by Amendment No. 1, is 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, as modified by Amendment No. 1 thereto, 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 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 the 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.9 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.4 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.5

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.6 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.7 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,8 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:9

• 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").10 Pursuant to the RSA and the 17d–2 Agreement, FINRA is allocated regulatory responsibilities to review NES’s compliance with certain Exchange rules.11 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.12
• 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.13

The Exchange has met all the above-listed conditions in connection with

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10 See Phlx Rule 985, Nasdaq Rule 2160 and BX Rule 2140.
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, as modified by Amendment No. 1, 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 email to 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 email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet 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 Web site 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 such 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 January 19, 2017.

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

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2016–31475 Filed 12–28–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing of Proposed Rule Change To Amend the Opening Process

December 22, 2016.

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 16, 2016, ISE Gemini, LLC (“ISE Gemini” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.