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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65934; File No. SR-Phlx-2011-170)

December 9, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change to Request Permanent Approval of the Pilot Program to Permit NASDAQ OMX PSX to Accept Inbound Orders that Nasdaq Execution Services, LLC Routes in its Capacity as a Facility of The NASDAQ Stock Market LLC

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 1, 2011, NASDAQ OMX PHLX LLC (“Phlx” or the “Exchange”) filed with the Securities and Exchange Commission (q“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

Phlx is filing this proposed rule change to request permanent approval of the Exchange’s pilot program to permit the Exchange’s NASDAQ OMX PSX system (“PSX”) to accept inbound orders that Nasdaq Execution Services, LLC (“NES”) routes in its capacity as a facility of The NASDAQ Stock Market LLC (“NASDAQ”). Phlx proposes to implement the rule change upon Commission approval. The text of the proposed rule change is available at <http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx>, at Phlx’s principal office, and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Currently, NES is the approved outbound routing facility of NASDAQ for cash equities, providing outbound routing from NASDAQ to other market centers.³ PSX also has been previously approved to receive inbound routes of cash equities orders by NES in its capacity as an order routing facility of NASDAQ on a pilot basis.⁴ The Exchange hereby seeks permanent approval to permit PSX to accept inbound orders that NES routes in its capacity as a facility of NASDAQ (subject to the attendant obligations and conditions).

During the pilot period, the Exchange committed to the following conditions:

1. Pursuant to a regulatory services agreement (the "FINRA RSA") between the Exchange and Financial Industry Regulatory Authority, Inc. ("FINRA"), FINRA will review

³ See NASDAQ Rule 4758. See also Securities Exchange Act Release Nos. 50311 (September 3, 2004), 69 FR 54818 (September 10, 2004) (Order Granting Application for a Temporary Conditional Exemption Pursuant To Section 36(a) of the Exchange Act by the National Association of Securities Dealers, Inc. Relating to the Acquisition of an ECN by The Nasdaq Stock Market, Inc.) and 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (SR-NASD-2005-128) (Order Approving a Proposed Rule Change To Establish Rules Governing the Operation of the INET System).

⁴ See Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR-Phlx-2010-79) (the "PSX Approval Order"). See also Securities Exchange Act Release No. 65552 (October 13, 2011), 76 FR 64989 (October 19, 2011) (Sr-Phlx-2011-139) (extending pilot through April 8, 2012).

NES's compliance with the Exchange's rules through FINRA's examination program.⁵ Pursuant to the FINRA RSA, however, the Exchange retains ultimate responsibility for enforcing its rules with respect to NES.

2. FINRA and the Exchange⁶ will monitor NES for compliance with the Exchange's trading rules, and will collect and maintain certain related information.⁷

3. FINRA will provide a report to the Exchange's CRO, on a quarterly basis, that: (i) quantifies all alerts (of which FINRA and the Exchange are aware) that identify NES as a participant that has potentially violated Commission or Exchange rules, and (ii) quantifies the number of all investigations that identify NES as a participant that has potentially violated Commission or Exchange rules.

4. The Exchange will adopt and maintain Rule 985(c)(2), which requires NASDAQ OMX, 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

⁵ In addition, NES is subject to independent oversight by FINRA, its Designated Examining Authority, for compliance with financial responsibility requirements.

⁶ Personnel performing real-time oversight of equity trading on NASDAQ will also perform similar functions with respect to PSX pursuant to a regulatory services agreement among NASDAQ, the Exchange, NASDAQ OMX BX, Inc., and NASDAQ OMX (the "Intercompany RSA") under the direction, authority, and oversight of Phlx's Chief Regulatory Officer ("CRO") and the Regulatory Oversight Committee ("ROC") of its Board of Directors.

⁷ Pursuant to the FINRA RSA, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of Nasdaq routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will 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.

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.

5. The routing of orders from NES to the Exchange, in NES's capacity as a facility of NASDAQ, will be authorized for a pilot period of twelve months (later extended for an additional six months).

The Exchange has met all the above-listed conditions. By meeting the above-conditions, the Exchange has set up mechanisms that protect the independence of the Exchange's regulatory responsibilities 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. Since the Exchange has met all the above-listed conditions, it now seeks permanent approval of the PSX and NES inbound routing relationship. The Exchange will continue to comply with conditions 1-4 on an ongoing basis.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and with Section 6(b)(5) of the Act,⁹ 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.

Specifically, the proposed rule change will allow the Exchange to continue receiving inbound

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

routes of equities orders from NES acting in its capacity as a facility of NASDAQ, in a manner consistent with prior approvals and established protections. The Exchange believes that its having met the commitments established during the pilot program demonstrates that (i) the Exchange has mechanisms to protect the independence of the Exchange's regulatory responsibilities with respect to NES, and (ii) NES cannot use any information advantage it may have because of its affiliation with the Exchange.

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

Phlx 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.

C. 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.

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 self-regulatory organization 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. Please include File Number SR-Phlx-2011-170 on the subject line.

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-2011-170. 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 website (<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 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 publicly available. All submissions should refer

to File Number SR-Phlx-2011-170 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.¹⁰

Kevin M. O'Neill
Deputy Secretary

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¹⁰ 17 CFR 200.30-3(a)(12).