Proposed Rule Change by Philadelphia Stock Exchange

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial Amendment Withdrawal

Section 19(b)(2) Section 19(b)(3)(A) Section 19(b)(3)(B)

Rule

Pilot Extension of Time Period for Commission Action Date Expires

19b-4(f)(1) 19b-4(f)(4)
19b-4(f)(2) 19b-4(f)(5)
19b-4(f)(3) 19b-4(f)(6)

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Proposal to add PBOT Enterprise License Fee

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 proposed rule change.

First Name Jurij Last Name Trypupenko
Title Director
E-mail jurij.trypupenko@phlx.com
Telephone (215) 496-5019 Fax (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.

Date 09/28/2006
By Jurij Trypupenko

Signature (Name) Director

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.

Jurij Trypupenko,
<table>
<thead>
<tr>
<th>Form 19b-4 Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>The self-regulatory organization must provide all required information, presented in</td>
</tr>
<tr>
<td>a clear and comprehensible manner, to enable the public to provide meaningful</td>
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<tr>
<td>comment on the proposal and for the Commission to determine whether the proposal</td>
</tr>
<tr>
<td>is consistent with the Act and applicable rules and regulations under the Act.</td>
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<table>
<thead>
<tr>
<th>Exhibit 1 - Notice of Proposed Rule Change</th>
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<tbody>
<tr>
<td>The Notice section of this Form 19b-4 must comply with the guidelines for</td>
</tr>
<tr>
<td>publication in the Federal Register as well as any requirements for electronic filing</td>
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<td>as published by the Commission (if applicable). The Office of the Federal Register</td>
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<td>(OFR) offers guidance on Federal Register publication requirements in the Federal</td>
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<tr>
<td>Register Document Drafting Handbook, October 1998 Revision. For example, all</td>
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<tr>
<td>references to the federal securities laws must include the corresponding cite to the</td>
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<tr>
<td>United States Code in a footnote. All references to SEC rules must include the</td>
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<tr>
<td>corresponding cite to the Code of Federal Regulations in a footnote. All references</td>
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<tr>
<td>to Securities Exchange Act Releases must include the release number, release date,</td>
</tr>
<tr>
<td>Federal Register cite, Federal Register date, and corresponding file number (e.g.,</td>
</tr>
<tr>
<td>SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in</td>
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<tr>
<td>the proposed rule change being deemed not properly filed. See also Rule 0-3 under the</td>
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<tr>
<td>Act (17 CFR 240.0-3)</td>
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<tr>
<th>Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications</th>
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</thead>
<tbody>
<tr>
<td>Copies of notices, written comments, transcripts, other communications. If such</td>
</tr>
<tr>
<td>documents cannot be filed electronically in accordance with Instruction F, they shall</td>
</tr>
<tr>
<td>be filed in accordance with Instruction G.</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>Exhibit 3 - Form, Report, or Questionnaire</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copies of any form, report, or questionnaire that the self-regulatory organization</td>
</tr>
<tr>
<td>proposes to use to help implement or operate the proposed rule change, or that is</td>
</tr>
<tr>
<td>referred to by the proposed rule change.</td>
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</table>

<table>
<thead>
<tr>
<th>Exhibit 4 - Marked Copies</th>
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<tbody>
<tr>
<td>The full text shall be marked, in any convenient manner, to indicate additions to and</td>
</tr>
<tr>
<td>deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit</td>
</tr>
<tr>
<td>the staff to identify immediately the changes made from the text of the rule with which</td>
</tr>
<tr>
<td>it has been working.</td>
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</tbody>
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<thead>
<tr>
<th>Exhibit 5 - Proposed Rule Text</th>
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<tbody>
<tr>
<td>The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to</td>
</tr>
<tr>
<td>rule text in place of providing it in Item I and which may otherwise be more easily</td>
</tr>
<tr>
<td>readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of</td>
</tr>
<tr>
<td>the proposed rule change.</td>
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<tr>
<th>Partial Amendment</th>
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<tr>
<td>If the self-regulatory organization is amending only part of the text of a lengthy</td>
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<tr>
<td>proposed rule change, it may, with the Commission’s permission, file only those</td>
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<tr>
<td>portions of the text of the proposed rule change in which changes are being made if</td>
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<td>the filing (i.e. partial amendment) is clearly understandable on its face. Such partial</td>
</tr>
<tr>
<td>amendment shall be clearly identified and marked to show deletions and additions.</td>
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1. **Text of the Proposed Rule Change**

   The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\) and Rule 19b-4 thereunder,\(^2\) proposes to add an Enterprise License Fee of $10,000 per year or $850 per month, whichever is less, that would be assessed by the Exchange’s wholly owned subsidiary, the Philadelphia Board of Trade ("PBOT"), on eligible market data Vendors or Subvendors (collectively “Vendors”) for certain index values received over PBOT’s Market Data Distribution Network (“MDDN”).\(^3\)

   A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and a copy of the schedule of PBOT fees as amended is attached hereto as Exhibit 5.

2. **Procedures of the Self-Regulatory Organization**

   The Executive Committee, pursuant to delegated authority, approved the proposal for filing with the Securities and Exchange Commission ("SEC" or "Commission") on August 30, 2006.

   Questions and comments on the proposed rule change may be directed to Jurij Trypupenko, Director and Counsel, at (215) 496-5019, or Edith Hallahan, Senior Vice President and Deputy General Counsel, at (215) 496-5179.

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\(^3\) The MDDN is an Internet protocol multicast network developed by PBOT and SAVVIS Communications for the purpose of transmitting index values.
3. **Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

   a. **Purpose**

   The purpose of the proposed rule change is to add an Enterprise License Fee for eligible Vendors of market data disseminated over the MDDN. Phlx has licensed market data in the form of current and closing index values underlying most of Phlx's proprietary indexes to PBOT for the purpose of selling, reproducing, and distributing the index values over PBOT's MDDN (“Market Data”). The Exchange or its third party designee objectively calculates and makes available to PBOT every 15 seconds real time current and closing index values on each trading day. Market Data Vendors make the real time Market Data widely available to subscribers.

   On May 11, 2006, the Commission approved the Exchange’s proposal to allow PBOT to charge subscriber fees to Vendors of Market Data for all the values of Phlx's proprietary indexes disseminated by PBOT's MDDN. The subscriber fees are set out in agreements that PBOT executes with various Market Data Vendors for the right to receive, store, and retransmit the current and closing index values transmitted over the MDDN. The fees approved by the Commission in its May 11, 2006 approval order include: a monthly fee of: (a) $ 1.00 per "Device," as defined in the Market Data agreements, that is used by Vendors and their subscribers to receive and re-transmit

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5. The definition of "Device" in the agreements is complex and incorporates a number of other defined terms. The agreements provide that "Device" shall mean, in case of each Subscriber and in such Subscriber's discretion, either any Terminal or any End
Market Data on a real time basis, and (b) $.00025 per request for snapshot data, which is essentially Market Data that is refreshed no more frequently than once every 60 seconds,\(^6\) or $1,500 per month for unlimited snapshot data requests.\(^7\)

The Exchange now proposes to add an Enterprise License Fee that would be available to eligible Vendors. Specifically, where a Vendor is a firm acting as a retail broker-dealer conducting a material portion of its business via one or more proprietary Internet web sites by which such firm distributes Market Data to predominately non-professional Market Data users with whom such firm has a brokerage relationship (“Eligible Firm”), that Eligible Firm may pay an Enterprise License Fee of $10,000 per year or $850 per month, which ever is less, for its receipt and re-transmittal of Market Data. An Eligible Firm may also distribute Market Data to professional users with whom such firm has a brokerage relationship, provided such Market Data distribution is predominantly to non-professional users.\(^8\)

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User. A Subscriber's Device may be exclusively Terminals, exclusively End Users or a combination of Terminals or End Users and shall be reported in a manner that is consistent with the way the Vendor identifies such Subscriber's access to Vendor's data. By way of further explanation, an "End User" is an individual authorized or allowed by a Vendor to access and display real time market data that is distributed by PBOT over the MDDN; and a "Terminal" is any type of equipment (fixed or portable) that accesses and displays such market data.

\(^6\) The Exchange has filed SR-Phlx-2006-59 on September 27, 2006, proposing to increase the snapshot data fee to $.0025 per request. The increase in the fee reflects the amount of the fee that Exchange management had originally intended to propose to its Executive Committee and the Commission; the $.00025 fee for which the Exchange had previously requested approval was the result of a typographical error.

\(^7\) The index values may also be made available by Vendors on a delayed basis (i.e., no sooner than twenty minutes following receipt of the data by vendors) at no charge.

\(^8\) A non-professional user is defined in the fee schedule as any natural person who is not: (a) registered or qualified in any capacity with the Commission, the Commodities Futures
To be eligible for the Enterprise License Fee, an Eligible Firm shall have to certify to PBOT that it qualifies for the Enterprise License Fee, including in regard to distribution to professional and non-professional users, and shall need to immediately notify PBOT if it can no longer certify its qualification.

b. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^9\) in general, and furthers the objectives of Section 6(b)(5) of the Act\(^10\) 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 income to PBOT, a subsidiary of the Phlx.

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Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an "investment advisor" as that term is defined in Section 201 (11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor, (c) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. Moreover, Market Data distribution will be considered to be “predominantly to non-professional users” so long as the Eligible Firm’s total distribution to professional users, as a percentage of distribution to non-professional users, does not exceed 10%.


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

The Phlx 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.

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**

The Exchange does not consent to an extension of the time period for Commission action.

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

The Exchange requests that the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth (30) day after publication on the Federal Register. Nothing in this proposed rule filing raises any new, unique, or substantively different issues from those raised by the Exchange in its previous MDDN fee filing and, for this reason, the Exchange requests the Commission to grant accelerated approval of the proposal.

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

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

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9. **Exhibits**

1. Notice of proposed rule for publication in the *Federal Register*.

5. Copy of PBOT’s fee schedule reflecting the Enterprise License Fee.
Exhibit 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-Phlx-2006-63)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to PBOT Enterprise License Fee

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 ______________________ 2006, the Philadelphia Stock Exchange, Inc. ("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 Phlx. 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 Phlx, pursuant to Section 19(b)(1) of the Act \(^3\) and Rule 19b-4 thereunder, \(^4\) proposes to add an Enterprise License Fee of $10,000 per year or $850 per month, whichever is less, that would be assessed by the Exchange’s wholly owned subsidiary, the Philadelphia Board of Trade ("PBOT"), on eligible market data Vendors or

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Subvendors (collectively “Vendors”) for certain index values received over PBOT’s Market Data Distribution Network (“MDDN”).


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 Phlx 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 Phlx 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 proposed rule change is to add an Enterprise License Fee for eligible Vendors of market data disseminated over the MDDN. Phlx has licensed market data in the form of current and closing index values underlying most of Phlx's proprietary indexes to PBOT for the purpose of selling, reproducing, and distributing the index values over PBOT's MDDN (“Market Data”). The Exchange or its third party designee objectively calculates and makes available to PBOT every 15 seconds real time current and closing index values on each trading day. Market Data Vendors make the real time Market Data widely available to subscribers.

5 The MDDN is an Internet protocol multicast network developed by PBOT and SAVVIS Communications for the purpose of transmitting index values.
On May 11, 2006, the Commission approved the Exchange’s proposal to allow PBOT to charge subscriber fees to Vendors of Market Data for all the values of Phlx's proprietary indexes disseminated by PBOT's MDDN. The subscriber fees are set out in agreements that PBOT executes with various Market Data Vendors for the right to receive, store, and retransmit the current and closing index values transmitted over the MDDN. The fees approved by the Commission in its May 11, 2006 approval order include: a monthly fee of: (a) $1.00 per "Device," as defined in the Market Data agreements, that is used by Vendors and their subscribers to receive and re-transmit Market Data on a real time basis, and (b) $.00025 per request for snapshot data, which is essentially Market Data that is refreshed no more frequently than once every 60 seconds, or $1,500 per month for unlimited snapshot data requests.


7 The definition of "Device" in the agreements is complex and incorporates a number of other defined terms. The agreements provide that "Device" shall mean, in case of each Subscriber and in such Subscriber's discretion, either any Terminal or any End User. A Subscriber's Device may be exclusively Terminals, exclusively End Users or a combination of Terminals or End Users and shall be reported in a manner that is consistent with the way the Vendor identifies such Subscriber's access to Vendor's data. By way of further explanation, an "End User" is an individual authorized or allowed by a Vendor to access and display real time market data that is distributed by PBOT over the MDDN; and a "Terminal" is any type of equipment (fixed or portable) that accesses and displays such market data.

8 The Exchange has filed SR-Phlx-2006-59 on September 27, 2006, proposing to increase the snapshot data fee to $.0025 per request. The increase in the fee reflects the amount of the fee that Exchange management had originally intended to propose to its Executive Committee and the Commission; the $.00025 fee for which the Exchange had previously requested approval was the result of a typographical error.

9 The index values may also be made available by Vendors on a delayed basis (i.e., no sooner than twenty minutes following receipt of the data by vendors) at no charge.
The Exchange now proposes to add an Enterprise License Fee that would be available to eligible Vendors. Specifically, where a Vendor is a firm acting as a retail broker-dealer conducting a material portion of its business via one or more proprietary Internet web sites by which such firm distributes Market Data to predominately non-professional Market Data users with whom such firm has a brokerage relationship (“Eligible Firm”), that Eligible Firm may pay an Enterprise License Fee of $10,000 per year or $850 per month, which ever is less, for its receipt and re-transmittal of Market Data. An Eligible Firm may also distribute Market Data to professional users with whom such firm has a brokerage relationship, provided such Market Data distribution is predominantly to non-professional users.\(^\text{10}\)

To be eligible for the Enterprise License Fee, an Eligible Firm shall have to certify to PBOT that it qualifies for the Enterprise License Fee, including in regard to distribution to professional and non-professional users, and shall need to immediately notify PBOT if it can no longer certify its qualification.

\(^{10}\) A non-professional user is defined in the fee schedule as any natural person who is not: (a) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an "investment advisor" as that term is defined in Section 201 (11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor, (c) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. Moreover, Market Data distribution will be considered to be “predominantly to non-professional users” so long as the Eligible Firm’s total distribution to professional users, as a percentage of distribution to non-professional users, does not exceed 10%.
2. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act 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 income to PBOT, a subsidiary of the Phlx.

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.

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**

The Exchange requests that the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth (30) day after publication on the Federal Register. Nothing in this proposed rule filing raises any new, unique, or substantively different issues from those raised by the Exchange in its

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previous MDDN fee filing and, for this reason, the Exchange requests the Commission to grant accelerated approval of the proposal.

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-2006-63 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2006-63. 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

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from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx.

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-2006-63 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.\(^\text{14}\)

Nancy M. Morris 
Secretary

\(^{14}\) \text{17 CFR 200.30-3(a)(12).}
### MARKET DATA FEES (Per Month)

A: Proprietary Sector Index Spot and Settlement Values (“Index Data”)

<table>
<thead>
<tr>
<th>Fee (per month)</th>
<th>Real-Time Continuous Market Data</th>
<th>Delayed Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per Device/User ID/Terminal ID</td>
<td>$1.00 per Device</td>
<td>None</td>
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<table>
<thead>
<tr>
<th>Fee (per month)</th>
<th>Real-Time Snapshot Market Data</th>
<th>Delayed Only</th>
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</thead>
<tbody>
<tr>
<td>Vendor/Subvendor</td>
<td>$0.00025 per snapshot request</td>
<td>OR $1,500 per month for unlimited snapshot requests</td>
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</tbody>
</table>

| Enterprise License Fee (see eligibility criteria)* | $10,000 per year | OR $850 per month, which ever is less | None |

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1 Vendors which provide market data to 200,000 or more Devices in any month qualify for a 15% Administrative Fee deduction for that month. This discount only applies to the Index Data.
* Enterprise License Fee Eligibility Criteria

A Vendor or Subvendor eligible for the Index Data Enterprise License Fee is a firm that acts as retail broker-dealer conducting a material portion of its business via proprietary Internet web sites by which such firm distributes Market Data to predominately non-professional Market Data users with whom such firm has a brokerage relationship (“Eligible Firm”). An Eligible Firm may also distribute Market Data to professional users with whom the firm has a brokerage relationship, provided such Market Data distribution is predominantly to non-professional users.\(^2\)

Enterprise License Fee Certification

To be eligible for the Enterprise License Fee, an Eligible Firm shall certify to PBOT that it meets the Enterprise License Fee Eligibility Criteria, including that regarding professional and non-professional users as applicable, and shall immediately notify PBOT if it can no longer so certify.

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\(^2\) A non-professional user is any natural person who is not: (a) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an "investment advisor" as that term is defined in Section 201 (11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor, (c) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. Moreover, Market Data distribution will be considered to be “predominantly to non-professional users” so long as the Eligible Firm’s total distribution to professional users, as a percentage of distribution to non-professional users, does not exceed 10%.