Proposed Rule Change by Philadelphia Stock Exchange

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

<table>
<thead>
<tr>
<th>Initial</th>
<th>Amendment</th>
<th>Withdrawal</th>
<th>Section 19(b)(2)</th>
<th>Section 19(b)(3)(A)</th>
<th>Section 19(b)(3)(B)</th>
<th>Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐</td>
<td>☑</td>
<td>☐</td>
<td>☑</td>
<td>☐</td>
<td>☐</td>
<td></td>
</tr>
</tbody>
</table>

Extension of Time Period for Commission Action

Date Expires

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

Description

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 11/01/2006

By Jurij Trypupenko

(Name)

Director

(Title)

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.
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.

<table>
<thead>
<tr>
<th>Exhibit 1 - Notice of Proposed Rule Change</th>
<th>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)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications</td>
<td>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.</td>
</tr>
<tr>
<td>Exhibit 3 - Form, Report, or Questionnaire</td>
<td>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.</td>
</tr>
<tr>
<td>Exhibit 4 - Marked Copies</td>
<td>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.</td>
</tr>
<tr>
<td>Exhibit 5 - Proposed Rule Text</td>
<td>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.</td>
</tr>
<tr>
<td>Partial Amendment</td>
<td>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.</td>
</tr>
</tbody>
</table>
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 that would be assessed by the Exchange’s wholly owned subsidiary, the Philadelphia Board of Trade ("PBOT"),\(^3\) on eligible market data Vendors or Subvendors (collectively “Vendors”) for certain index values received over PBOT’s Market Data Distribution Network ("MDDN").\(^4\)

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, amended text indicating additions to or deletions from the immediately preceding filing is attached hereto as Exhibit 4, and PBOT’s fee schedule 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.

---


\(^3\) This Amendment No. 1 clarifies the original proposal and supersedes the original filing in its entirety.

\(^4\) The MDDN is an Internet protocol multicast network developed by PBOT and SAVVIS Communications for the purpose of transmitting index values.
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.

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 PBOT’s 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 the MDDN (“Market Data”). The Exchange or its third party designee objectively calculates and makes available to PBOT real-time index values every 15 seconds and closing index values at the end of each trading day. Pursuant to agreements with PBOT, Market Data Vendors make the real-time Market Data widely available to subscribers.\(^5\)

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.\(^6\) 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.

\(^5\) PBOT has contracted with one or more major Market Data Vendors to receive real-time and closing index values over the MDDN and promptly redistribute such values.

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,\(^7\) that is used by Vendors and their subscribers to receive and re-transmit Market Data on a real-time basis ("device fee"), and (b) $.00025 per request for snapshot data, which is essentially Market Data that is refreshed no more frequently than once every 60 seconds,\(^8\) or $1,500 per month for unlimited snapshot data requests ("snapshot fee").\(^9\)

The Exchange now proposes to add an Enterprise License Fee that would be available to eligible Vendors as an alternative to the device fee or snapshot fee.\(^10\)

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

---

\(^7\) 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.

\(^9\) 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.

\(^10\) A firm that qualifies for the Enterprise License Fee may instead choose to pay the device fee and/or the snapshot fee as appropriate.
with whom such firm has a brokerage relationship (“Eligible Firm”),¹¹ that Eligible Firm may pay an Enterprise License Fee of $10,000 per year or $850 per month 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.¹² Market Data distribution will be considered to be “predominantly to non-professional users” so long as the Eligible Firm’s Market Data distribution to professional users when compared to Market Data distribution to all (professional and non-professional) users does not exceed 10%.¹³

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

---

¹¹ The Exchange would consider a broker dealer’s business to be material for the purposes of qualifying for the Enterprise License Fee if at least twenty percent (20%) of that business were conducted via the Internet.

¹² 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 202 (11) of the Investment Advisors Act of 1940, U.S.C. 80b-2(11) (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.

¹³ As an example, if data recipient ABC Corp. has 100 customers that receive PBOT Market Data of which 10 are professional users and 90 are retail (non-professional) users the Enterprise License Fee would be available to the firm because 10 professional users / 100 total users = 10%.
distribution to professional and non-professional users, and shall need to immediately notify PBOT if it can no longer certify its qualification.\textsuperscript{14}

In developing the Enterprise License Fee, PBOT considered inquiries from actual and potential broker dealer data recipients regarding the availability of an Enterprise License for data transmitted over the MDDN and the fact that industry organizations such as Nasdaq Stock Market, Inc. and the Options Price Reporting Authority and data vendors such as Dow Jones & Company and Standard & Poor’s (a division of The McGraw-Hill Companies, Inc.) have offered an enterprise license fee to data recipients. The Exchange believes that the proposed fee of $10,000 per year or $850 per month is fair and reasonable and consistent with industry practice.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\textsuperscript{15} in general, and furthers the objectives of Section 6(b)(5) of the Act\textsuperscript{16} in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing an alternate fee structure to market data recipients and thereby encouraging re-distribution of such data. The Exchange believes that its proposal is likewise consistent

\textsuperscript{14} A firm that has entered into an agreement with PBOT to receive Market Data over the MDDN but is not qualified for the Enterprise License Fee may pay the device fee and/or the snapshot fee as appropriate.

\textsuperscript{15} 15 U.S.C. 78f(b).

with Section 6(b)(4) of the Act\textsuperscript{17} in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities as described herein.

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)**

Not applicable.

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.

9. **Exhibits**

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

---

\textsuperscript{17} 15 U.S.C. 78f(b)(4).
4. Amended text indicating additions to or deletions from the immediately preceding filing.

5. PBOT’s fee schedule.
**PHILADELPHIA BOARD OF TRADE**

**FEE SCHEDULE**

**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>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Fee (per month)</th>
<th>Real-Time Continuous and Real-Time Snapshot Market Data</th>
<th>Delayed Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enterprise License Fee (see eligibility criteria)*</td>
<td>$10,000 per year</td>
<td>None</td>
</tr>
</tbody>
</table>

---

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.
$850 per month, 
[[which ever is less]]

* 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 Market Data distribution is predominantly to [[regarding professional and]] non-professional users[[ as applicable]], and shall immediately notify PBOT if it can no longer so certify.

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%.
Exhibit 1

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

Self-Regulatory Organizations; Notice of Filing 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 that would be assessed by the Exchange’s wholly owned subsidiary, the Philadelphia Board of Trade ("PBOT"),\(^5\) on eligible market data Vendors or Subvendors (collectively


\(^5\) This Amendment No. 1 clarifies the original proposal and supersedes the original filing in its entirety.
“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 PBOT’s 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 the MDDN (“Market Data”). The Exchange or its third party designee objectively calculates and makes available to PBOT real-time index values every 15 seconds and closing index values at the end of each trading day. Pursuant to agreements

---

6 The MDDN is an Internet protocol multicast network developed by PBOT and SAVVIS Communications for the purpose of transmitting index values.
with PBOT, Market Data Vendors make the real-time Market Data widely available to subscribers.\footnote{PBOT has contracted with one or more major Market Data Vendors to receive real-time and closing index values over the MDDN and promptly redistribute such 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.\footnote{See Securities Exchange Act Release No. 53790 (May 11, 2006), 71 FR 28738 (May 17, 2006) (SR-Phlx-2006-04).} 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,\footnote{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.} that is used by Vendors and their subscribers to receive and re-transmit Market Data on a real-time basis ("device fee"), and (b) $.00025 per request for snapshot data, which is essentially Market Data that is refreshed no more frequently than once
every 60 seconds,\textsuperscript{10} or $1,500 per month for unlimited snapshot data requests ("snapshot fee").\textsuperscript{11}

The Exchange now proposes to add an Enterprise License Fee that would be available to eligible Vendors as an alternative to the device fee or snapshot fee.\textsuperscript{12} 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"),\textsuperscript{13} that Eligible Firm may pay an Enterprise License Fee of $10,000 per year or $850 per month 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.\textsuperscript{14} Market Data

\textsuperscript{10} The Exchange has filed SR-Phlx-2006-59 on September 27, 2006, proposing to increase the snapshot data fee to $.0025 per request.

\textsuperscript{11} 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.

\textsuperscript{12} A firm that qualifies for the Enterprise License Fee may instead choose to pay the device fee and/or the snapshot fee as appropriate.

\textsuperscript{13} The Exchange would consider a broker dealer’s business to be material for the purposes of qualifying for the Enterprise License Fee if at least twenty percent (20%) of that business were conducted via the Internet.

\textsuperscript{14} 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 202 (11) of the Investment Advisors Act of 1940, U.S.C. 80b-2(11) (whether or not registered or qualified under that Act); nor, (c) employed by a bank or other organization exempt from registration under
distribution will be considered to be “predominantly to non-professional users” so long as the Eligible Firm’s Market Data distribution to professional users when compared to Market Data distribution to all (professional and non-professional) users does not exceed 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.

In developing the Enterprise License Fee, PBOT considered inquiries from actual and potential broker dealer data recipients regarding the availability of an Enterprise License for data transmitted over the MDDN and the fact that industry organizations such as Nasdaq Stock Market, Inc. and the Options Price Reporting Authority and data vendors such as Dow Jones & Company and Standard & Poor’s (a division of The McGraw-Hill Companies, Inc.) have offered an enterprise license fee to data recipients. PBOT believes that its proposed fee of $10,000 per year or $850 per month is fair and reasonable and consistent with industry practice.

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.

15 As an example, if data recipient ABC Corp. has 100 customers that receive PBOT Market Data of which 10 are professional users and 90 are retail (non-professional) users the Enterprise License Fee would be available to the firm because 10 professional users / 100 total users = 10%.

16 A firm that has entered into an agreement with PBOT to receive Market Data over the MDDN but is not qualified for the Enterprise License Fee may pay the device fee and/or the snapshot fee as appropriate.
2. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^{17}\) in general, and furthers the objectives of Section 6(b)(5) of the Act\(^{18}\) in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing an alternate fee structure to market data recipients and thereby encouraging redistribution of such data. The Exchange believes that its proposal is likewise consistent with Section 6(b)(4) of the Act\(^{19}\) in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities as described herein.

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.

---

\(^{17}\) 15 U.S.C. 78f(b).


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

Within 35 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 Phlx consents, the Commission shall: (a) by order approve 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-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
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
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.20

Nancy M. Morris
Secretary

Exhibit 5

New language is underlined.

PHILADELPHIA BOARD OF TRADE

FEE SCHEDULE

MARKET DATA FEES (Per Month)

A: Proprietary Sector Index Spot and Settlement Values (“Index Data”)¹:

<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>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Fee (per month)</th>
<th>Real-Time Continuous and Real-Time Snapshot Market Data</th>
<th>Delayed Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enterprise License Fee (see eligibility criteria)*</td>
<td>$10,000 per year</td>
<td>OR</td>
</tr>
<tr>
<td></td>
<td>$850 per month,</td>
<td>None</td>
</tr>
</tbody>
</table>

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 Market Data distribution is predominantly to non-professional users, and shall immediately notify PBOT if it can no longer so certify.

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 does not exceed 10%.