This collection of information is designed to allow the Commission to maintain an accurate record of all new derivative securities products traded on the SROs that are not deemed to be proposed rule changes and to determine whether an SRO has properly availed itself of the permission granted by Rule 19b–4(e). The Commission reviews SRO compliance with Rule 19b–4(e) through its routine inspections of the SROs.

The respondents to the collection of information are SROs (as defined by the Act), all of which are national securities exchanges. As of March 2013, there are seventeen entities registered as national securities exchanges with the Commission. The Commission receives an average total of 3,879 responses per year, which corresponds to an estimated annual response burden of 3,879 hours. At an average hourly cost of $63, the aggregate related cost of compliance with Rule 19b–4(e) is $244,377 (3,879 burden hours multiplied by $63/hour).

Compliance with Rule 19b–4(e) is mandatory. Information received in response to Rule 19b–4(e) shall not be kept confidential; the information collected is public information.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: PRA_Mailbox@sec.gov.
The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change, which relates to a new order type—the Auto-Ex Only Order,—the Comment Letters that have been submitted in connection with this proposed rule change, and NSX’s Response to the Comment Letters.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act, designates May 8, 2013, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NSX–2013–02).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.8

Kevin M. O’Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Establishing a Program for PSX Managed Data Solutions (MDS)

March 19, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),9 and Rule 19b–4 thereunder, notice is hereby given that on March 13, 2013, NASDAQ OMX PHLX LLC (“PHLX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a 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 the Substance of the Proposed Rule Change

The Exchange proposes a rule change in Section VIII (NASDAQ OMX PSX Fees) of the NASDAQ OMX PHLX Pricing Schedule,10 to establish a program for Managed Data Solutions (“MDS”) in a new section entitled PSX Managed Data Solution Fees (“PSX MDS Fees”). The text of the proposed rule change is provided in Exhibit 5. The text of the proposed rule change is also available on the Exchange’s Web site at http://nasdaqomxphlx.ichwallstreet.com, at the principal office of the Exchange, 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

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

PSX is now proposing to create a new data distribution model known as MDS in MDS Fees to further the distribution of PSX TotalView.4 This offers a new pricing and administrative option available to firms seeking simplified market data administration for MDS products containing PSX TotalView (“PSX Depth Data”).

Proposed PSX MDS Fees is similar to The NASDAQ Stock Market LLC (“NASDAQ”) Rule 7026 and NASDAQ OMX BX, Inc. (“BX”) Rule 7026 in terms of offering MDS for a fee to members of the Exchange.5 MDS may be offered by members of the Exchange as well as Distributors6 to clients and/or client organizations that are using the PSX Depth Data internally in a non-display manner. This new pricing and administrative option is in response to industry demand, as well as due to improvements in the contractual administration and the technology used to distribute market data. Distributors offering MDS continue to be fee liable for the applicable distributor fees for the receipt and distribution of the PSX Depth Data such as PSX TotalView.7

MDS is a pricing and administrative option that will assess a new fee schedule to Distributors of PSX Depth Data that provide datafeed solutions such as an Application Programming Interface (API) or similar automated delivery solutions to recipients with limited entitlement controls (e.g., usernames and/or passwords) (“Managed Data Recipients”). However, the Distributor must first agree to reformat, redisplay and/or alter the PSX Depth Data prior to retransmission, but not to affect the integrity of the PSX Depth Data and not to render it inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory. MDS is any retransmission datafeed product containing PSX Depth Data offered by a Distributor where the Distributor manages and monitors, but does not necessarily control, the information. However, the Distributor does maintain contracts with the Managed Data Recipients and is liable for any unauthorized use by the Managed Data Recipients. The Managed Data Recipients may only use the information for internal, non-display purposes and may not distribute the information outside of their organization.

In the past, retransmissions were considered to be an uncontrolled data product if the Distributor did not and immediate effectiveness implementing MDS on BX (the “BX MDS filing”). Other options markets have also implemented a managed data solution. See, e.g., Securities Exchange Release No. 65678 (November 3, 2011), 76 FR 70178 (November 10, 2011) (SR–ISE–2011–07) (notice of filing and immediate effectiveness implementing a managed data solution on ISE).

Proposed subsection (b) of PSX MDS Fees states that the term “Distributor” shall have the same meaning as set forth in Section VIII. Section VIII, PSX TotalView states that the PSX TotalView entitlement allows a subscriber to see all individual NASDAQ OMX PSX participant orders displayed in NASDAQ OMX PSX, the aggregate size of such orders at each price level, and the trade data for executions that occur within NASDAQ OMX PSX.


1 17 CFR 200.3–3(a)(31).

6 Proposed subsection (b) of PSX MDS Fees states that the term “Distributor shall have the same meaning as set forth in Section VIII. Section VIII, PSX TotalView states that the PSX TotalView entitlement allows a subscriber to see all individual NASDAQ OMX PSX participant orders displayed in NASDAQ OMX PSX, the aggregate size of such orders at each price level, and the trade data for executions that occur within NASDAQ OMX PSX.

4 Proposed subsection (b) of PSX MDS Fees states that the term “Distributor” shall have the same meaning as set forth in Section VIII. Section VIII, PSX TotalView states that the PSX TotalView entitlement allows a subscriber to see all individual NASDAQ OMX PSX participant orders displayed in NASDAQ OMX PSX, the aggregate size of such orders at each price level, and the trade data for executions that occur within NASDAQ OMX PSX.

5 See, e.g., Section VIII, PSX TotalView.