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 a.m. and 3 p.m. eastern time. Copies of such filings will also 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–NSX–2014–15 and should be submitted on or before June 19, 2014.

For the Commission by the Division of Trading and Markets, pursuant to the delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–12423 Filed 5–28–14; 8:45 am]

BILLING CODE 8011–01–P

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72225; File No. SR–Phlx–2014–34]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Delete From Section IX of the Exchange's Options Fee Schedule the PHOTO Historical Data Product

May 22, 2014.

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 May 9, 2014, NASDAQ OMX PHLX LLC (''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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to delete from Section IX of the Exchange's Options Fee Schedule the PHOTO Historical data product.

The text of the proposed rule change is below; proposed new language is italicized.

* * * * *

NASDAQ OMX PHLX LLC Pricing Schedule

* * *

IX. Proprietary Data Feed Fees

Top of PHLX Options (''TOPO'')

No change.

TOPO Plus Orders

No change.

PHLX Orders

No change.

PHLX Depth Data

No change.

PHLX Options Trade Outline (''PHOTO'')

Account type	Monthly charge
End of Day Product Subscriber	$500
Intra-Day Product Subscriber	1,500

[PHOTO Historical Data

Account type	Charge per calendar month requested
End of Day Product Subscriber	$400
Intra-Day Product Subscriber	750

[9] For example, a subscriber who requests End of Day PHOTO Historical Data for the Month of March, 2009 would be charged $400. A subscriber who requests End of Day PHOTO Historical Data for the months of March, 2009 and April, 2009 would be charged $400 for the March, 2009 End of Day data and $400 for the April, 2009 End of day data, for a total of $800, etc. A subscriber who requests Intra-Day PHOTO Historical Data for the Month of March, 2009 would be charged $750.00. A subscriber who requests Intra-Day PHOTO Historical Data for the months of March, 2009 and April, 2009 would be charged $750 for the March, 2009 Intra-Day data and $750 for the April, 2009 Intra-Day data, for a total of $1,500, etc.]

* * * * *

(b) Not applicable.

(c) Not applicable.

* * * * *

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

The Exchange proposes to modify Section IX of the Exchange's Options Pricing Schedule to delete references to the PHOTO Historical data product. PHOTO Historical is a stored data product and not a real time data feed. NASDAQ OMX stores the data on a server within a technology subsidiary that functions like any vendor that receives and stores real time data feed. PHOTO Historical is not a facility of the Exchange and fees associated with it do not belong in the Exchange Rule Manual.

Background. In September 2010, the Exchange established fees for its PHOTO market data product.[3] PHOTO is a market data product offered by the Exchange that provides proprietary electronic trade data to subscribers. PHOTO is available as either an ''Intra-Day'' or ''End-of-Day'' product. PHOTO Historical, as the name implies, is not a real-time product; it is a stored product that permits a subscriber to select a particular prior calendar month or months and receive the ''End of Day'' or ''Intra-Day'' data for each trading session conducted during the calendar month(s) selected.

Like PHOTO subscribers, PHOTO Historical subscribers receive the following data:

[3] *See* Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR–Phlx–2010–121).

• Aggregate number of buy and sell transactions in the affected series for each trading session conducted during the specified calendar month(s);

• Aggregate volume traded electronically on the Exchange in the affected series for each trading session conducted during the specified calendar month(s);

• Aggregate number of trades effected on the Exchange to open a position [4] for each trading session conducted during the specified calendar month(s);

• Aggregate number of trades effected on the Exchange to close a position [5] for each trading session conducted during the specified calendar month(s);

• Origin of the orders involved in trades on the Exchange in the affected series for each trading session conducted during the specified calendar month(s), specifically aggregated in the following categories of participants: Customers, broker-dealers, market makers (including specialists, Registered Options Traders (''ROTs''), Streaming Quote Traders (''SQTs'') [6] and Remote Streaming Quote Traders (''RSQTs'') [7]), and professionals.[8]

The fee for the PHOTO Historical Data End of Day product for subscribers is $400.00 per calendar month selected. The fee for the PHOTO Historical Data Intra-day product subscribers is $750.00 per calendar month selected.

Proposal. NASDAQ believes that PHOTO Historical is not a facility of the Exchange within the meaning of the Act, and that previous proposed rule changes with respect to such PHOTO Historical were unnecessary under the Act. Congress enacted the Exchange Act to impose federal regulation on stock exchanges, and included in its definition of ''exchange'' ''the market facilities maintained by such exchange.'' [9] The Exchange Act separately defines ''facility,'' providing that ''[t]he term 'facility' when used with respect to an exchange includes [1] its premises, [2] tangible or intangible property whether on the premises or not, [3] any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and [4] any right of the exchange to the use of any property or service.'' *Id.* The Commission has not separately interpreted the definition of ''facility.'' [10]

PHOTO Historical does not satisfy any of the four prongs set forth in the statutory definition of ''facility.'' First, it is not the ''premises'' of the Exchange. The term ''premises'' is generally understood to refer to a building, its land, and appurtenances. Second, PHOTO Historical is not tangible or intangible property of the Exchange. While the Exchange initially distributes the PHOTO product as a facility; NASDAQ OMX stores and distributes PHOTO Historical as any vendor would do. Third, PHOTO Historical is not used on the Exchange's premises ''for the purpose of effecting or reporting a transaction'' on an exchange.[11] Fourth, PHLX, in its capacity as an exchange, does not hold any right to PHOTO Historical other than as the original distributor of such data for which it receives applicable, filed fees.

The Exchange's proposal is consistent with past precedent regarding the distribution of historical data. Specifically, in 2010, the NASDAQ Stock Market submitted a proposed rule change to eliminate from the NASDAQ rule manual references to Historical TotalView.[12] In that case, TotalView was a real-time data product that was stored in a non-exchange subsidiary that then redistributed the stored data in the same manner and capacity as any market data vendor. The proposal was designated as an immediately effective proposal and was not acted upon by the Commission.

Conversely, there is no Commission precedent for considering the historical data of an exchange to be considered a facility when re-distributed by a market data vendor. For example, when NASDAQ separated from NASD, the Commission was asked to determine whether TRF LLC, which would operate NASD's Trade Reporting Facility, was a facility of NASD or the Nasdaq Exchange, which together owned TRF LLC.[13] The Nasdaq Exchange was to be ''primarily responsible for the management of the TRF LLC's business affairs,'' and all ''profits and losses from the TRF LLC [were] allocated to NASDAQ.'' *Id.* at 15; *see also id.* at 18 (''[T]he Nasdaq Exchange's parent company controls the board of the TRF LLC, directs all business decisions, provides technology, and will reap the economic benefits of the TRF LLC.''). Nevertheless, the Commission concluded that the TRF LLC was a facility of *NASD,* not the Nasdaq Exchange, because the ''Trade Reporting Facility is not a service 'for the purpose of effecting or reporting a transaction' on the Nasdaq Exchange.'' *Id.* at 18. The

[4] PHOTO Historical Data provides subscribers with the aggregate number of ''opening purchase transactions'' in the affected series for each trading session conducted during the calendar month(s) selected. An opening purchase transaction is an Exchange options transaction in which the purchaser's intention is to create or increase a long position in the series of options involved in such transaction. *See* Exchange Rule 1000(b)(24). PHOTO Historical Data also provides subscribers with the aggregate number of ''opening writing transactions'' in the affected series for each trading session conducted during the calendar month(s) selected. An opening writing transaction is an Exchange options transaction in which the seller's (writer's) intention is to create or increase a short position in the series of options involved in such transaction. *See* Exchange Rule 1000(b)(25).

[5] PHOTO Historical Data provides subscribers with the aggregate number of ''closing purchase transactions'' in the affected series for each trading session conducted during the calendar month(s) selected. A closing purchase transaction is an Exchange options transaction in which the purchaser's intention is to reduce or eliminate a short position in the series of options involved in such transaction. *See* Exchange Rule 1000(b)(27). PHOTO Historical Data will also provide subscribers with the aggregate number of ''closing sale transactions'' in the affected series for each trading session conducted during the calendar month(s) selected. A closing sale transaction is an Exchange options transaction an Exchange options transaction in which the seller's intention is to reduce or eliminate a long position in the series of options involved in such transaction. *See* Exchange Rule 1000(b)(26).

[6] An SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. *See* Exchange Rule 1014(b)(ii)(A).

[7] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[8] The term ''professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A professional will be treated in the same manner as an off-floor broker-dealer for purposes of Rules 1014(g) (except with respect to all-or-none orders, which will be treated like customer orders), 1033(e), 1064.02 (except professional orders will be considered customer orders subject to facilitation), and 1080.08 as well as Options Floor Procedure Advices B–6, B–11 and F–5. Member organizations must indicate whether orders are for professionals. *See* Exchange Rule 1000(b)(14).

[9] 15 U.S.C. § 78c(a)(1).

[10] Securities Exchange Act Release No. 26708, at 4 n.28 (1989) (recognizing that the definition of the term ''facility'' has not changed since it was originally adopted and that no hearing testimony referred to it because ''the Committee felt that the definition was 'self-explanatory'''') (citation omitted).

[11] 15 U.S.C. 78c(a)(2).

[12] Securities Exchange Act Release No. 61416 (Jan. 25, 2010) (SR–NASDAQ–2010–010).

[13] Securities Exchange Act Release No. 54084 (June 30, 2006).

TRF LLC was instead ''a service for the purpose of reporting transactions to the NASD.'' *Id.*

Similarly, the Commission concluded that the ACES System, ''a neutral communications service that allows NASDAQ members and non-members to route orders to one another,'' is not a facility of the NASDAQ Exchange.[14] The Commission deemed it significant that the ACES System does not route orders to NASDAQ and does not report executed trades on the Exchange. *Id.* The Commission emphasized that, because the ACES System is ''not linked to the Exchange's core systems, including the NASDAQ Market Center,'' it ''is not possible for an order to be routed to the NASDAQ Market Center via the ACES system.'' *Id.* Accordingly, the Commission concluded that ACES does not have ''the purpose of effecting or reporting a transaction on an exchange'' within the meaning of the Exchange Act. *Id.* The Commission has also permitted NASDAQ to remove from its rule book fees related to the Mutual Fund Quotation Service and the NASDAQ Index Dissemination Service, both of which disseminated market data not properly considered ''facilities'' of NASDAQ within the meaning of the Exchange Act.[15]

Given the plain language of the Exchange Act and the above-referenced precedents, there is no basis in the Act for determining that a real-time market data facility of an exchange retains that character when an affiliated vendor redistributes it on an historical basis. First, the affiliated vendor is not an exclusive processor of such data, unlike the data that PHLX produces directly. Second, historical data does not provide access or order entry capability to the Exchange's execution system; nor does it carry information from or about executions currently within the execution system. Third, the affiliated vendor receives the data via an arms-length agreement and it has no inherent advantage over any other recipient of such data. Moreover, historical data is available via multiple sources. It is a completely voluntary product in that PHLX makes it available on a voluntary basis, and clients purchase it from NASDAQ OMX (or another vendor) only if they voluntarily choose to do so.

For all of these reasons, PHLX believes that its PHOTO Historical data service is not a facility of a national securities exchange within the meaning of the Act and that it is not required under Section 19(b)(1) of the Act[16] and Rule 19b–4 thereunder[17] to file rules regarding the applicable charges.

2. Statutory Basis

PHLX believes that PHOTO Historical is not a facility of a national securities exchange within the meaning of the Act and the terms of this service are not rules that must be filed with the Commission under Section 19(b)(1) of the Act[18] and Rule 19b–4 thereunder.[19] Therefore, removing the applicable provisions from the PHLX rule book would be consistent with the provisions of Section 6(b) of the Act.[20]

PHLX's proposal to remove PHOTO Historical from the rule manual is also consistent with the Exchange Act insofar as it will have no impact on PHLX's or its members' compliance with applicable regulations and rules. First, PHLX has no obligation under the Exchange Act, either as an exchange or a vendor, to offer PHOTO Historical to PHLX members. Having chosen to offer such data and to do so on non-discriminatory terms imposes no continuing obligation to do so. Second, even assuming PHLX did have an obligation to make PHOTO Historical available, it will continue to do so in the same manner if does now. Therefore, to the extent PHLX members utilize PHOTO Historical, that use will be uninterrupted. Third, there are multiple vendors of historical, many of whom are not subject to Commission oversight.

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. To the contrary, PHLX believes that this proposed rule change removing from the PHLX rule manual a service improperly included, promotes competition by removing an impediment to PHLX's competition with unregulated market data providers with which PHLX competes for these services. Removing barriers to competition has the potential to promote innovation, reduce prices, and increase efficiency.

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 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–2014–34 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2014–34. 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

[14] Securities Exchange Act Release No. 56237 (August 9, 2007).

[15] *See* Securities Exchange Act Release No. 58392 (August 20, 2008) (removing MFQS from rule book); Securities Exchange Act Release No. 58897 (November 3, 2008) (removing NIDS from rule book).

[16] 15 U.S.C. 78s(b)(1).

[17] 17 CFR 240.19b–4.

[18] 15 U.S.C. 78s(b)(1).

[19] 17 CFR 240.19b–4.

[20] 15 U.S.C. 78f(b).

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 offices 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–2014–34, and should be submitted on or before June 19, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72224; File No. SR–DTC–2014–04]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change to Effect Changes to the DTC Settlement Service Guide Relating to the Automated Customer Account Transfer Service of National Securities Clearing Corporation

May 22, 2014.

I. Introduction

On March 27, 2014, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposed rule change SR–DTC–2014–04 (''Proposed Rule Change'')[3] to implement changes to the DTC Settlement Service Guide (''Guide'') that conform with proposed changes to the Automated Customer Account Transfer Service (''ACATS'') of National Securities Clearing Corporation (''NSCC''),[4] a DTC affiliate. The Proposed Rule Change was published for comment in the **Federal Register** on April 11, 2014.[5] The Commission did not receive comments to the Proposed Rule Change. This order approves the Proposed Rule Change.[6]

II. Description

A. Current ACATS Process

ACATS is an NSCC service that interfaces with DTC for the delivery of customer[7] securities from the account of one Participant (that is also an NSCC member (''Member'')) to another Participant (that is also a Member). Under the NSCC Proposal, customer account transfers with respect to two types of DTC-eligible securities will be processed through a new NSCC accounting operation (''ACATS Settlement Accounting Operation'') on an ACATS settlement date. Because of the NSCC Proposal, conforming changes are required to the Guide.

The key provision of the NSCC Proposal impacting DTC is that ACATS transactions will no longer have an associated incentive charge applied to them by NSCC as the transactions are processed.[8] As such, an ACATS transfer will no longer present a funds settlement risk to NSCC or DTC; thus, ACATS transfers will be processed by DTC free of payment. Accordingly, DTC proposes to change the applicable procedures in the Guide, as described below. Additionally, the Proposed Rule Change includes clarifications in the Guide with respect to the protection of customer securities processed through ACATS.

B. Proposed DTC Rule Changes

Elimination of Short Cover Charge

An ''ACATS short cover charge'' is a dollar amount guaranteed by NSCC to DTC for the value of securities delivered from a Participant's DTC account to NSCC for processing by NSCC through its Continuous Net Settlement system (''CNS''). Because ACATS transfers will be entirely free of payment under the NSCC proposal as described above, a provision in the Guide relating to the processing of ''ACATS short cover charges'' will be deleted, with related adjustments to references to the DTC Collateral Monitor.[9]

Elimination of Long Allocation Reversals

At NSCC, under current rules, long allocations of securities made via CNS may be reversed if the NSCC Member receiving the securities fails to meet its NSCC money settlement obligation. Because ACATS transactions will not generate any funds settlement obligations, this reversal is eliminated. The provision in the Guide describing the NSCC reversal will be deleted.

Memo Seg Optionality

Memo Seg is a systemic mechanism that allows Participants to prevent inventory that is not subject to a lien or claim of DTC (''Minimum Amount'' or ''MA'') from falling below a certain number of units.[10] In order to extend the Memo Seg option to securities received via ACATS transfers, the Guide will be revised to provide that a Participant may increase its number of units designated for protection under Memo Seg to reflect ACATS receipts.

Clarification with Respect to MA Securities

ACATS transfers are not subject to any lien or claims by DTC because they are transferred free of payment. Upon receipt into a Participant account, the securities constitute MA securities pursuant to the Rules.[11] The Guide currently uses the term ''Deemed MA'' to reflect this condition. This terminology is no longer necessary because, under the NSCC Proposal, a funds obligation no longer attaches to ACATS transactions. Accordingly, the term ''Deemed MA'' will be deleted from the Guide, and a new section of the Guide will confirm that ACATS securities received by a Participant will, by virtue of the ACATS transfer, be credited to the Participant's receiving account as MA.[12]

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[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] DTC will announce the implementation of this Proposed Rule Change via an Important Notice to DTC participants (''Participants'').

[4] NSCC filed a corresponding proposed rule change with the Commission. *See* Release No. 34–71887 (Mar. 27, 2014), 79 FR 20290 (Apr. 11, 2014) (SR–NSCC–2014–04) (''NSCC Proposal'').

[5] Release No. 34–71886 (Mar. 27, 2014), 79 FR 20260 (Apr. 11, 2014) (SR–DTC–2014–04).

[6] Terms not defined herein have the meaning set forth in DTC's Rules, By-Laws, and Organization Certificate (''Rules''), available at *http://dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.ashx.*

[7] For purposes of the Proposed Rule Change, ''customer'' refers to an accountholder of a Participant whose account is transferred to another Participant by an ACATS transaction.

[8] *See* NSCC Proposal, 79 FR 20290.

[9] These adjustments reduce a Participant's Collateral Monitor with respect to its net ACATS short positions at the start of ACATS settlement date. The Participant then receives credit in its Collateral Monitor for ACATS deliveries as they occur throughout the day.

[10] Memo Seg is offered by DTC to its Participants to support their control of fully-paid customer securities, although its effectiveness for that purpose depends entirely on the Participant's management of its accounts.

[11] Securities received through the ACATS Settlement Accounting Operation are not counted as part of the Participant's Collateral Monitor, unless and until the receiving Participant, in accordance with the Rules, designates those securities as Net Additions (''NA'').

[12] In this regard, a Participant accepting an ACATS free delivery automatically designates the subject securities as MA securities. Therefore, such securities are not counted in the Collateral Monitor