

supervision.¹⁷ Under circumstances where such conclusive reliance is not available to the selling broker, the selling broker may fulfill these supervisory obligations by reviewing and approving individual account openings and transactions as information becomes available from the primary distributor, transfer agent or other relevant party. In all cases of non-recommended transactions, the selling broker must undertake prompt reviews and approvals of agreements obtained from employers to participate in a workplace marketing program and for recording account information under rule G-8(a)(ii) and customer specific information for each enrolled employee required under rule G-8(a)(xi) (of which only information under items (A), (C), (E) and (H) thereunder shall be required) as it becomes available. A selling broker wishing to rely on the guidance provided in this notice also is required to record the name and principal business address of any employer agreeing to participate in a workplace marketing program, together with the signature of an appropriate principal approving such agreement. Selling brokers are reminded that the conclusive reliance permitted by this paragraph and the preceding paragraph is not available in the case of recommended transactions, in which case the selling broker retains the primary obligation to fulfill all customer protection, disclosure, supervisory and recordkeeping duties.

Dealers should note that none of the foregoing obviates the need for primary distributors to fulfill all of their customer protection obligations under MSRB rules where a selling broker is not otherwise required to fulfill such obligations. Furthermore, if transactions subsequent to the initial enrollment of an employee in a workplace marketing program are effected directly between the employee and the primary distributor, the primary distributor generally will have sole responsibility with respect to compliance with MSRB rules in connection with such subsequent transactions, provided that the selling broker will be required to record information regarding subsequent transactions as required under rule G-8(a)(ii) to the extent that it receives transaction-based compensation for such transactions. Dealers also should note that, if employees make their purchases directly from the governmental issuer (whether through the issuer's own

employees or any non-dealer agent of the issuer), the selling broker or primary distributor that enlists an employer to participate in a workplace marketing program is ultimately responsible for fulfilling all of its obligations under MSRB rules. Thus, for example, although an issuer may undertake to provide disclosure materials to investors, the dealer remains responsible under MSRB rules should the issuer fail to deliver the required disclosures to an employee who enrolls in a 529 college savings plan through a workplace marketing program promoted by the dealer acting as a selling broker, or if such disclosure information is not delivered in a timely manner.

[FR Doc. 03-11998 Filed 5-13-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47813; File No. SR-NYSE-2003-11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to NYSE Broker Volume Web Service

May 8, 2003.

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 April 22, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to establish fees for its NYSE Broker Volume Web Service, a new service that allows subscribers to view reports of broker share volume information that the NYSE produces from the NYSE Broker Volume Database. The text of the proposed rule change is below. Proposed new language is in italics.

NYSE 2003 PRICE LIST

* * * * *

MARKET DATA FEES

* * * * *

Schedule of Monthly Charges (excluding applicable taxes)

* * * * *

NYSE Broker Volume

*NYSE Broker Volume Web Service—per user—\$300.00**

NYSE Broker Volume Database access fee—\$3,000.00

NYSE Broker Volume Device Fee—per terminal—\$100.00

(Maximum monthly device fee per subscriber—\$2,500.00)

** Applies for web access to reports directly from NYSE. Persons that subscribe on or prior to October 1, 2003, receive a 30-day waiver of the NYSE Broker Volume Web Service fee.*

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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 establish fees to make NYSE Broker Volume information available via a new Web-based service (the "NYSE Broker Volume Web Service"). Subscribers to this new service will be able to log-on to the NYSE Web site (www.nysedata.com) ("Web site") and receive formatted displays containing aggregate broker-dealer volume rankings in NYSE-traded securities. NYSE produces these displays from NYSE's electronic database of raw share volume information. NYSE creates that database from trades in NYSE-listed securities that participating NYSE members execute on NYSE (the "NYSE Broker Volume Database"). NYSE developed the NYSE Broker Volume Database to respond to requests from broker-dealers and others.

Vendors currently make broker volume reports available without the use of the NYSE Broker Volume

¹⁷ Under these circumstances, the primary distributor could be held responsible for any failures to meet such supervisory obligations.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Database. They produce those services from volume data that broker-dealers voluntarily provide. NYSE constituents have told NYSE that they do not find those reports sufficient and have asked NYSE to distribute broker volume information that reflects members' actual trading activity as reported to NYSE. In response, NYSE created the NYSE Broker Volume Database and made that database available to vendors as an alternative to the databases that vendors are creating for themselves. On November 12, 2002, NYSE filed a proposed rule change³ to establish fees for vendor access to the NYSE Broker Volume Database and for vendor distribution to subscribers of Broker Volume Reports that vendors generate from the NYSE Broker Volume Database (the "2002 Filing"). The 2002 Filing imposes a per-device subscriber fee that is subject to a per-subscriber monthly maximum that is reached when a subscriber has 25 devices.

Pursuant to the 2002 Filing, vendors may redistribute information from the NYSE Broker Volume Database in the form of controlled displays of broker volume reports. Vendors may display the reports according to their own preferences and styles and in the manner that they consider most useful to their subscribers. However, to date, no vendors have taken advantage of the opportunity to access the NYSE Broker Volume Database or to make reports generated from that database available to subscribers. Yet, NYSE continues to receive requests for broker volume information from its members and investors.

Accordingly, the Exchange proposes to provide a NYSE Broker Volume Web Service, which will allow market participants to gain access to NYSE Broker Volume displays that NYSE creates from the NYSE Broker Volume Database. NYSE will provide the NYSE Broker Volume Web Service on a controlled display directly to subscribers over the Web site.

The Exchange proposes to charge subscribers \$300 per month for each user that has access to the NYSE Broker Volume Web Service. NYSE has established a secure information display and retrieval system through the combined use of user IDs and passwords. Persons with access to NYSE Broker Volume displays through the NYSE Broker Volume Web Service will not be able to manipulate the information contained in the displays or to redistribute the displays to others.

The Exchange will require each subscriber to execute a suitable subscriber agreement with the Exchange. The Exchange will not cap the NYSE Broker Volume Web Service fees payable in respect of a subscriber, as it does in respect of subscribers that receive broker volume reports from a vendor.

For any individual that first subscribes to the NYSE Broker Volume Web Service on or prior to October 1, 2003, NYSE will waive the NYSE Broker Volume Web Service fee for 30 days (the "Free Trial Period"). The Free Trial Period will be applied on a rolling basis, determined by the date on which NYSE first entitles a new individual subscriber or potential individual subscriber to receive the NYSE Broker Volume Web Service. A specific individual subscriber may only receive this fee waiver one time.

2. Statutory Basis

The NYSE believes the proposed rule change is consistent with section 6(b)(4) of the Act⁴ because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

The Exchange believes that the proposal will not impose any burden on competition that is 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

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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 the Exchange consents, the Commission will:

(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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR-NYSE-2003-11 and should be submitted by June 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-11994 Filed 5-13-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47819; File No. SR-Phlx-2002-17]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto and Notice of Filing of and Order Granting Accelerated Approval to Amendment Nos. 4, 5, 6, and 7 Thereto Relating to Crossing, Facilitation, and Solicited Orders

May 8, 2003.

I. Introduction

On March 18, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act

³ Securities Exchange Act Release No. 46847 (November 19, 2002), 67 FR 70799 (November 26, 2002)(SR-NYSE-2002-61).

⁴ 15 U.S.C. 78f(b)(4).

⁵ 17 CFR 200.30-3(a)(12).