

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.

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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

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MARKET DATA FEES

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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.