

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.

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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).