

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 self-regulatory organization 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 the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2003-161 and should be submitted by December 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48808; File No. SR-NYSE-2003-35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. to Extend the 30-Day Free Trial Period for Broker Volume

November 19, 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 November 14, 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 Exchange filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder⁴ as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization, which renders the proposal effective upon filing with the Commission. 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 extend the free 30-day trial period for its NYSE Broker Volume Report service, a service that permits subscribers to view Broker Volume Reports of broker share volume information that the NYSE produces from the NYSE Broker Volume Database. The text of the proposed rule change is available at the NYSE and at the Commission.

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 NYSE included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. 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

By order dated June 13, 2003, the Commission approved a proposed rule change (the "Web Service Fee Filing") by which the NYSE established a monthly \$300 fee for a subscriber's receipt of access to NYSE Broker Volume information that the NYSE makes available via a web-based service (the "NYSE Broker Volume Web Service").⁵ That service enables subscribers to log-on to the NYSE Web site (<http://www.nysedata.com>) and to receive formatted displays containing aggregate broker-dealer volume rankings in NYSE-traded securities.

In the Web Service Fee Filing, NYSE agreed to waive the NYSE Broker Volume Web Service fee for 30 days (the "Free Trial Period") for any individual that first subscribed to the NYSE Broker Volume Web Service on or prior to October 1, 2003.

The NYSE has found the Free Trial Period to constitute a successful marketing tool. More than half of all subscribers that subscribe to the NYSE Broker Volume Web Service for the 30-day Free Trial Period continue to subscribe after the Free Trial Period ends. For that reason, the NYSE proposes to extend the application of the 30-day Free Trial Period to subscribers that first subscribe to the NYSE Free Trial Period on or prior to April 1, 2004. To avoid a lapse in the application of the Free Trial Period, the Exchange is making the proposed rule change effective retroactively to October 1, 2003.⁶

The NYSE proposes to continue to apply the Free Trial Period on a rolling basis, determined by the date on which the NYSE first entitles a new individual subscriber or potential individual subscriber to receive the NYSE Broker

⁵ See Securities Exchange Act Release No. 48060 (June 19, 2003), 68 FR 37889 (June 25, 2003) (SR-NYSE-2003-11) (approval order).

⁶ The Commission notes that the NYSE should have filed the instant proposed rule change before the expiration of the original period approved for the 30-day free trial period in SR-NYSE-2003-11. To ensure uniformity in the fees paid by subscribers to the NYSE's Broker Volume Report service, the Commission has, in this isolated case, allowed the NYSE to file the instant proposed rule change pursuant to Section 19(b)(3)(A)(ii) and Rule 19b-4(f)(2) thereunder, and to apply it retroactively to October 1, 2003. The Commission expects that, in the future, the NYSE will monitor its proposed rule changes to ensure that there are no lapses that would require the application of a proposed rule change retroactively.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁹ 17 CFR 200.30-3(a)(12).