

Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Amendment No. 1 to the proposed rule change was filed on October 21, 2002. Amendment No. 2 to the proposed rule change was filed on November 7, 2002.<sup>3</sup> 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 that no transactional fees will be charged for shares of the Fresco<sup>SM</sup> Dow Jones STOXX 50<sup>SM</sup> Fund and Fresco<sup>SM</sup> Dow Jones EURO STOXX 50<sup>SM</sup> Fund (the “Funds”), to be listed and traded on the Exchange.<sup>4</sup>

### **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 the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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 anticipates that the Funds will shortly be listed and traded on the Exchange. The Exchange states that it desires to garner experience in providing a market for the Funds. Accordingly, the Exchange proposes to implement a “fee holiday,” constituting zero transaction charges, for trading the Funds on the Exchange at this time.

<sup>3</sup> In Amendment Nos. 1 and 2, the NYSE corrected typographical errors and added specific text to its schedule of transaction fees to reflect the “fee holiday” that is the subject of the proposed rule change. See letters from Darla Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 21, 2002 and November 6, 2002. The amendments were solely technical in nature.

<sup>4</sup> See Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Listing and Trading of Exchange Traded Funds Based on Dow Jones STOXX 50 and Dow Jones EURO STOXX 50 Indexes, Securities Exchange Act Release No. 46686 (October 18, 2002), 67 FR 65388 (October 24, 2002).

##### **2. Statutory Basis**

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)<sup>5</sup> that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities.

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will 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 neither solicited nor received written comments on 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**

The foregoing rule change, which establishes or changes a due, fee or other charge imposed by the Exchange, has become effective pursuant to Section 19(b)(3)(A)<sup>6</sup> of the Act and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>7</sup> At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

### **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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

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 No. SR-NYSE-2002-52 and should be submitted by December 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46781; File No. SR-NYSE-2002-54]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the New York Stock Exchange, Inc. Amending NYSE Rule 60 to Eliminate Depth Indications and Depth Conditions**

November 7, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 22, 2002, 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 delete Supplementary Material .30 of NYSE Rule 60 (“Dissemination of Quotations”) relating to the dissemination of depth indications and depth conditions that reflect market interest in a security below the current published bid and above the current published offer. The text of the proposed rule change is available at the NYSE or at the Commission.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

## 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 and is set forth in Sections A, B, and C below.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

In March 2001, the Exchange amended NYSE Rule 60 to permit an Exchange specialist to indicate that there is additional market interest in a security not shown in the published quotation (*i.e.*, interest to buy below the current published bid, or interest to sell above the current published offer).<sup>3</sup> The additional market interest reflected in the depth indication and depth condition could include the specialist's proprietary interest, orders the specialist has on his or her book, and other orders, such as percentage orders, which the specialist is representing as agent.

The dissemination of a depth indication or depth condition by a specialist is made on a "best efforts basis." The specialist is allowed to use his or her professional judgment to determine whether disseminating additional market interest would be useful with respect to current conditions in the security or the market in general. Depth indications and depth conditions are purely informational in nature and, therefore, do not themselves constitute a "firm" quotation for purposes of NYSE Rule 60 or Rule 11Ac1-1 under the Act.<sup>4</sup>

The Exchange now proposes to discontinue the use of depth indications and depth conditions. Since the initiation of depth indication and depth condition, the Exchange has undertaken the development of other means to provide market participants with current and useful market information to provide greater transparency with respect to the actual depth of the market below the best bid and above the best offer. One such initiative is NYSE OpenBook™, which was launched on

January 24, 2002.<sup>5</sup> OpenBook provides a comprehensive view of NYSE limit order books for all Exchange-traded securities, enabling market participants to see aggregate limit order interest at price levels outside the displayed Exchange quotation.

The Exchange is currently developing another mechanism to provide greater transparency with respect to the existence of additional interest in Exchange-traded securities, which will consist of the display of a "liquidity quote" along with the best quote.<sup>6</sup> In the Liquidity Quote Proposal, the Exchange will be proposing to have liquidity quotes reflect aggregated trading interest at a specific price interval below the best bid or above the best offer. In addition, in the Liquidity Quote Proposal, the Exchange will be proposing that liquidity quotes are "firm" quotes for the purposes of NYSE and Commission rules. The Exchange therefore believes that the discontinuance of depth indications and depth conditions will allow the Exchange to utilize system capacity currently dedicated to depth conditions and depth indications to facilitate the development and testing of liquidity quotes.<sup>7</sup>

#### 2. Statutory Basis

The Exchange believes that the statutory basis for this proposed rule change is Section 6(b)(5) of the Act,<sup>8</sup> which requires that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

<sup>5</sup> For further details on NYSE OpenBook™, see Securities Exchange Act Release No. 45138 (December 18, 2001), 66 FR 66491 (December 26, 2001) (order approving the establishment of Exchange fees for NYSE OpenBook™).

<sup>6</sup> On October 28, 2002, the NYSE filed with the Commission a proposed rule change to amend its rules to display additional quotations showing the depth of market. See File No. SR-NYSE-2002-55 ("Liquidity Quote Proposal").

<sup>7</sup> The Exchange intends to provide notice before discontinuing dissemination of the depth condition and depth indicator to members via a floor memorandum, subscribers via e-mail, and vendors by telephone. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Kelly Riley, Senior Special Counsel, Division of Market Regulation, Commission, dated November 5, 2002.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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 neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder<sup>10</sup> because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, provided that the NYSE has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change or such shorter time as designated by the Commission.<sup>11</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange believes that the advent of the OpenBook service and the Exchange's plan to introduce liquidity quote information will adequately replace information provided by depth indications and conditions and, therefore, the proposal is non-controversial.

## 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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> The NYSE has requested and the Commission has agreed to waive the five-day pre-filing notice requirement.

<sup>3</sup> See Securities Exchange Act Release No. 44084 (March 16, 2001), 66 FR 16307 (March 23, 2001) (SR-NYSE-01-06).

<sup>4</sup> 17 CFR 240.11Ac1-1.

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 No. SR-NYSE-2002-54 and should be submitted by December 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

J. Lynn Taylor,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46784; File No. SR-PCX-2002-68]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend Its Schedule of Fees and Charges To Increase the User Transaction Credit for Certain Transactions in American Depositary Receipts

November 7, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 8, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On November 5, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its fee schedule to increase the user transaction credit for ETP Holders and Sponsored Participants who provide liquidity in exchange-listed American Depositary Receipts ("ADRs") that are traded on the Archipelago Exchange, the equities trading facility of PCXE. The text of the proposed rule change is available at the Exchange 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 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 purpose of the proposed rule change is to amend the Exchange's fee schedule by increasing the level of the transaction credit paid to ETP Holders<sup>4</sup> and Sponsored Participants<sup>5</sup> (collectively "Users") who provide liquidity in exchange-listed ADRs that are traded on the Archipelago Exchange ("ArcaEx").

Currently, Users who provide liquidity in ADRs by entering into the ArcaEx Book<sup>6</sup> resting limit orders that are subsequently executed against incoming marketable orders, earn a credit of \$0.001 per share. The Exchange proposes to increase the level of the transaction credit for ADRs from \$0.001

to \$0.002 per share. The increased credit of \$0.002 is the same amount that is currently applied to orders that provide liquidity in Exchange-Traded Funds. This credit is intended to create additional incentives to Users to provide liquidity in ADRs that are traded on the ArcaEx facility.

###### 2. Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and Section 6(b)(4)<sup>8</sup> of the Act in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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

The Exchange does not believe that the proposed rule change will 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

Written comments on the proposed rule change were neither solicited nor received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>10</sup> At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Peter D. Bloom, Director, Policy Development, PCX to Rebekah Liu, Special Counsel, Division of Market Regulation, Commission, dated November 5, 2002. In Amendment No. 1, the Exchange corrected the fee schedule attached as Exhibit A to the rule filing to accurately reflect that existing underlined text would be double-underlined. Amendment No. 1 contained no substantive changes to the fee schedule.

<sup>4</sup> See PCXE Rule 1.1(n).

<sup>5</sup> A "Sponsored Participant" means "a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] Rule 7.29." See PCXE Rule 1.1(tt).

<sup>6</sup> ArcaEx maintains an electronic file of orders, called the ArcaEx Book, through which orders are displayed and matched. The ArcaEx Book is divided into four components, called processes—the Directed Order Process, the Display Order Process, the Working Order Process, and the Tracking Order Process. See PCXE Rules 7.36 and 7.37 for a detailed description of these order execution processes.