

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47257; File No. SR-NYSE-2002-59]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Mediation and Administrative Conferences

January 27, 2003.

On November 4, 2002, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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> a proposed rule change. On December 18, 2002, the NYSE submitted Amendment No. 1 to the proposal.<sup>3</sup> On December 27, 2002, the Exchange's rule proposal was published for comment in the **Federal Register**, as amended.<sup>4</sup> No comments letters were received on the proposal. This order approves the proposed rule change.

The NYSE proposes to allow its current pilot rules to expire and adopt amended rules for mediation and administrative conferences.<sup>5</sup> In particular, the Exchange's proposal would: (i) Allow parties to agree to mediation at their own expense; (ii) provide for the scheduling of an administrative conference at the request of the parties or discretion of the arbitrator(s) or Director of Arbitration; (iii) permit the Director to appoint a staff member or arbitrator to preside at the administrative conference which is to be held via telephone conference call

and limited to procedural matters. The proposal also would amend NYSE Rules 628 (Agreement to Arbitrate) and 630 (Uniform Arbitration Code) to reflect these changes.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>6</sup> and, in particular, the requirements of Section 6 and the rules and regulations thereunder.<sup>7</sup> Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. In particular, the Commission believes that the proposed rule change should help NYSE members, member organizations, and the public have a fair and impartial forum for the resolution of their disputes. Further, the Commission believes that the proposed rule is a reasonable effort by the Exchange to improve the efficiency of its dispute resolution arbitration process.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-NYSE-2002-59) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-2406 Filed 1-31-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47273; File No. SR-NYSE-2003-03]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Transaction Fees for Certain Exchange Traded Funds

January 29, 2003.

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 January 21, 2003, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

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

The Exchange proposes to charge transaction fees for shares of 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, that are listed and traded on the Exchange. The fees will be the same transaction fees charged for other exchange traded funds listed and traded on the Exchange. Proposed new language is *italicized*; proposed deletions are in [brackets].

\* \* \* \* \*

#### TRANSACTION FEES

Exchange Traded Funds	Amount
Exchange Traded Funds—Public Agency and Principal Transactions Broker/Dealer—price per round-lot .....	\$0.60
Maximum price per trade .....	100
System Orders under 5,100 shares <sup>1</sup> .....	No Charge.
Specialists and other on-floor proprietary trading—price per round-lot .....	0.63
Maximum price per trade .....	300
Exchange Traded Funds admitted to dealings on an unlisted trading privileges (UTP) basis .....	No Charge. <sup>2</sup>
[Specific NYSE Listed Exchange Traded Funds:	
Fresco <sup>SM</sup> Dow Jones STOXX 50 <sup>SM</sup> .....	No Charge. <sup>2</sup>
Fresco <sup>SM</sup> Dow Jones EURO STOXX 50 <sup>SM</sup> .....	No Charge. <sup>2</sup>

<sup>1</sup> Not inclusive of orders of a member or member organization trading as an agent for the account of a non-member competing market maker.

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

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

<sup>3</sup> See letter to Florence Harmon, Senior Special Counsel, SEC, from Darla Stuckey, Corporate Secretary, NYSE, dated December 17, 2002 ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 47025 (December 18, 2002), 67 FR 79214.

<sup>5</sup> On November 19, 1998, the Commission approved a two-year pilot program for mediation and administrative conferences in the Exchange's

arbitration facility. See Securities Exchange Act Release No. 34-40695 (November 19, 1998); 63 FR 65834 (November 30, 2000), (SR-NYSE-98-27). On December 29, 2000, the Commission approved amendments to the pilot rules and granted a two-year extension. See Securities Exchange Act Release No. 34-47076 (December 29, 2000); 66 FR 1710 (January 9, 2001), (SR-NYSE-00-39). The Commission extended this pilot for an additional thirty days until January 31, 2003. See Securities Exchange Act Release No. 34-43785 (December 20,

2002); 67 FR 79680 (December 30, 2002), (SR-NYSE-2002-65).

<sup>6</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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.

Competing Market Maker: a specialist or market-maker registered as such on a registered stock exchange (other than the NYSE), or a market-maker bidding and offering over-the-counter, in a New York Stock Exchange-traded security.

<sup>2</sup> This "fee holiday" is intended to be temporary. The Exchange expects to file a specific schedule of transaction charges at a future date.

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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 NYSE 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 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> ("Fresco Funds") were listed and commenced trading on the Exchange on October 21, 2002.<sup>3</sup> At the time of listing, the Exchange implemented a temporary "fee holiday," constituting zero transaction charges, for Fresco Funds for trading them on the Exchange.<sup>4</sup> The Exchange now proposes that starting February 1, 2003, transaction fees will be charged for trading of Fresco Funds. The fees will be the same transaction fees charged for other exchange traded funds listed and traded on the Exchange.<sup>5</sup>

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of section 6(b)(4)<sup>7</sup> in particular, in that 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 does not believe that the proposed rule change will impose any burden on competition.

<sup>3</sup> Securities Exchange Act Release No. 46686 (October 18, 2002), 67 FR 65388 (October 24, 2002).

<sup>4</sup> Securities Exchange Act Release No. 46786 (November 7, 2002), 67 FR 69280 (November 15, 2002).

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

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

### 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 comments on the proposed rule change.

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,<sup>8</sup> and rule 19b-4(f)(2) thereunder,<sup>9</sup> in that it establishes or changes a due, fee, or other charge imposed by the Exchange. 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 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-2003-03 and should be submitted by February 24, 2003.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFT 240.19b-4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03-2482 Filed 1-31-03; 8:45 am]

BILLING CODE 8010-01-P

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #P005]

#### Federated States of Micronesia

As a result of the President's major disaster declaration for Public Assistance on January 6, 2003, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit businesses that provide essential services of a governmental nature. I find that the State of Chuuk within the Federated States of Micronesia constitutes a disaster area due to damages caused by Typhoon Pongsona occurring from December 5, 2002, and continuing through December 7, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 7, 2003 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795.

The interest rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations Without Credit Available Elsewhere .....	3.324
Non-Profit Organizations With Credit Available Elsewhere .....	5.500

The number assigned to this disaster for physical damage is P00508.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: January 23, 2003.

Herbert L. Mitchell,

Associate Administrator For Disaster Assistance.

[FR Doc. 03-2400 Filed 1-31-03; 8:45 am]

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<sup>10</sup> 17 CFR 200.30-3(a)(12).