

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")¹ and Rule 19b-4 thereunder,² a proposed rule change. On December 18, 2002, the NYSE submitted Amendment No. 1 to the proposal.³ On December 27, 2002, the Exchange's rule proposal was published for comment in the **Federal Register**, as amended.⁴ 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.⁵ 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 exchange⁶ and, in particular, the requirements of Section 6 and the rules and regulations thereunder.⁷ 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,⁸ 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.⁹

Margaret H. McFarland,

Deputy Secretary.

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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"),¹ and rule 19b-4 thereunder,² 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 FrescoSM Dow Jones STOXX 50SM Fund and FrescoSM Dow Jones EURO STOXX 50SM 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].

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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 ¹ | 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. ² |
| [Specific NYSE Listed Exchange Traded Funds: | |
| Fresco SM Dow Jones STOXX 50 SM | No Charge. ² |
| Fresco SM Dow Jones EURO STOXX 50 SM | No Charge. ² |

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

⁵ 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).

⁶ 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).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.