

ahead of held limit orders at prices equal or superior to the limit orders applies to limit orders that are priced more than \$0.01 away from the current inside spread. Thus, the basic prohibition on trading ahead of a customer limit order at a price equal or superior to the limit order without filling the limit order applies to all limit orders in OTCBB securities covered by Rule 6541. The amount of required price improvement for limit orders priced at or inside the current inside spread remained the lesser of \$0.01 or one-half of the current inside spread. The pilots are currently scheduled to expire on December 15, 2002.<sup>9</sup>

Nasdaq has concluded that it is in investors' best interest to establish limit order protection requirements on a permanent basis for all securities quoted on the OTCBB. Nasdaq believes that limit order protection provides substantial protection to small investors by ensuring that members consider those orders when executing their own orders. In addition, Nasdaq believes that limit order protection prevents the isolation of customer limit orders that could otherwise occur when a member trades for its own account and a customer order fails to receive an execution. Nasdaq believes that the rule bolsters investors' confidence in the fairness of the market as a whole.

Nasdaq's Department of Economic Research ("ER") closely analyzed the impact of the Manning pilot on relevant aspects of the operation of the OTCBB. Nasdaq sought to ensure that the potential negative effects on the trading of OTCBB securities do not offset the positive effects of limit order protection. ER studied the following areas: impact on trading, market maker quoting activity, and spread behavior. To determine the impact of the pilot on trading activity, the study analyzed total volume, number of trades, and number of riskless principal trades (as a proxy for customer limit orders executed). ER studied changes to the number of market makers, quote updates, and bid/ask midpoint to determine that the pilot had no statistically significant impact on market maker quoting behavior. Finally, ER looked at a variety of spread statistics (quoted, effective, relative, relative effective). Overall, ER found no material negative implications on the measurable market quality of the OTCBB.

Based upon this study and its experience with the operation of the Manning rule in securities listed on Nasdaq, Nasdaq has concluded that limit order protection is a necessary and appropriate rule in the OTCBB marketplace. Nasdaq believes that it is a highly visible investor protection advancement that is consistent with the maintenance of a viable, liquid market. Nasdaq believes that the pilot program has effectively demonstrated that limit order protection is not detrimental to trading of less-liquid, low priced securities on the OTCBB. Accordingly, Nasdaq is extending limit order protection to all securities on the OTCBB.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act<sup>10</sup> in general, and with Section 15A(b)(6) of the Act<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster competition and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market, and to protect investors and the public interest.

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

Nasdaq does not believe that the proposed rule change would result in 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 were neither solicited nor received.

## 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 such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2002-153 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. 34-46786; File No. SR-NYSE-2002-52]

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

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 21, 2002, the New York Stock Exchange, Inc. ("NYSE" or "the Exchange") filed with the Securities and Exchange

<sup>9</sup> On January 14, 2002, and again on July 16, 2002, Nasdaq filed to extend the pilot programs. See Securities Exchange Act Release No. 45276 (January 14, 2002), 67 FR 2936 (January 22, 2002) (SR-NASD-2002-06); Securities Exchange Act Release 46248 (July 24, 2002), 67 FR 49727 (July 31, 2002) (SR-NASD-2002-95).

<sup>10</sup> 15 U.S.C. 78o-3.

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

<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.

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.