investment by the Investing Funds and Managed Accounts in shares of a Money Market Fund would be made on the same basis and indistinguishable from those of any other shareholders. Applicants state that, for the reasons discussed above, the proposed transactions meet the standards for an order under rule 17d–1.

II. Interfund Transactions

9. Applicants state that Money Market Funds and Managed Accounts may rely on rule 17a–7 under the Act to conduct Interfund Transactions. Rule 17a–7 under the Act provides an exemption from section 17(a) for purchase and sale transactions between a registered investment company and an affiliated person of such company (or an affiliated person of an affiliated person), provided certain condition are met, including that the affiliation between the registered investment company and the affiliated person (or an affiliated person of the affiliated person) must exist solely by reason of having a common investment adviser, common officers and/or common directors. Applicants state that by virtue of the Managed Accounts owning 5% or more of the outstanding voting securities of a Money Market Fund, the Managed Accounts and the Money Market Funds would no longer be affiliated solely by reason of having a common investment adviser, common officers and/or common directors.

10. Applicants request relief under sections 6(c) and 17(b) of the Act to permit the Interfund Transactions. Applicants state that to engage in Interfund Transactions, the Managed Accounts and Money Market Funds will comply with rule 17a–7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or affiliated person of affiliated persons) of each other solely by reason of having a common investment adviser or investment advisers that are affiliated persons of each other, common officer and/or common directors, solely because the Managed Accounts and the Money Market Funds might become affiliated persons within the meaning of sections 2(a)(3)(A) and (B) of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act or service fee (as defined in rule 2830(b)(9) of the NASD's Conduct Rules).

2. No Money Market Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. Each of the Investing Funds will invest Uninvested Cash in, and hold shares of, a Money Market Fund only to the extent that such Investing Fund's aggregate investment of Uninvested Cash in the Money Market Funds does not exceed 25 percent of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund will be treated as a separate investment company.

4. Each Investing Fund, Managed Account and Money Market Fund relying on the order will be advised by the Adviser. An Investing Fund that is subadvised, but not advised, by a NYLIM Adviser may rely on the order provided that the NYLIM Adviser managers the Cash Balances and the Investing Fund is in the same group of investment companies (as defined in section 12(d)(1)(G) of the Act) as the Money Market Fund in which the Investing Fund invests its Cash Balances.

5. Investment of Cash Balances by an Investing Fund in shares of the Money Market Funds will be in accordance with each Investing Fund's respective investment restrictions and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information.

6. Before the next meeting of the Board is held for the purpose of voting on an advisory contract under section 15 of the Act, the Adviser to the Investing Fund will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract, attributable to managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Money Market Funds. In connection with approving any advisory contract for an Investing Fund, the Board, including a majority of the Independent Trustees, shall consider to what extent, if any, the advisory fees charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of the Uninvested Cash being invested in the Money Market Funds. The minute books of the Investing Fund will record fully the Board's consideration in approving the advisory contract, including the considerations referred to above.

7. Before any Investing Fund may participate in a Securities Lending Program, a majority of the Board, including a majority of the Independent Trustees of the Investing Fund, will approve the Investing Fund's participation in the Securities Lending Program. Such trustees also will evaluate the securities lending arrangement and its results no less frequently than annually and determine that any investment of Cash Collateral in the Money Market Funds is in the best interest of the shareholders of such Investing Fund.

8. To engage in Interfund Transactions, the Managed Accounts and Money Market Funds will comply with rule 17a–7 under the Act in all respects other than the requirement that the parties to the transactions be affiliated persons (or affiliated persons of affiliated persons) of each other solely by reason of having a common investment adviser or investment advisers that are affiliated persons of each other, common officers and/or common directors, solely because the Managed Accounts and the Money Market Funds might become affiliated persons within the meaning of sections 2(a)(3)(A) and (B) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–12736 Filed 5–20–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–4781; File No. S7–966]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing of the Plan for Allocation of Regulatory Responsibilities Between the National Association of Securities Dealers, Inc. and the International Securities Exchange, Inc.

May 14, 2003.

Pursuant to section 17(d) of the Securities Exchange of 1934 (''Act'') [1] and Rule 17d–2 thereunder,[2] notice is hereby given that on January 7, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') and the International Securities Exchange, Inc. (''ISE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a plan for

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

allocation of regulatory responsibilities relating to options-related sales practices (''ISE/NASD Options-related Sales Practice 17d–2 Plan''). On May 1, 2003, NASD and ISE filed Amendment No. 1 to the ISE/NASD Options-related Sales Practice 17d–2 Plan.[3]

I. Introduction

Section 19(g)(1) of the Act,[4] among other things, requires every national securities exchange and registered securities association (''SRO'') to examine for and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to section 17(d) or 19(g)(2) of the Act.[5] Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). This regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[6] With respect to a common member, section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

To implement section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[7] Rule 17d–1, adopted on April 20, 1976,[8] authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with financial responsibility requirements imposed by the Act, or by Commission or SRO rules. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.

On its face, Rule 17d–1 deals only with an SRO's obligations to enforce broker-dealers' compliance with the financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices, and trading activities and practices.

To address regulatory duplication in these other areas, on October 28, 1976, the Commission adopted Rule 17d–2 under the Act.[9] This rule permits SROs to propose joint plans allocating regulatory responsibilities with respect to common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to and foster the development of a national market system and a national clearance and settlement system, and in conformity with the factors set forth in section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

On September 8, 1983, the Commission approved a plan for allocating regulatory responsibility pursuant to Rule 17d–2 for certain options-related sale practice matters (''Options-related Sales Practice 17d–2 Plan'').[10] Under this plan, the SRO to whom a firm was designated was responsible for conducting options-related sales practice examinations and investigating options-related customer complaints and terminations for cause of associated persons; the designated SRO was also known as the firm's ''Designated Options Examining Authority'' or ''DOEA.'' Under the Options-related Sales Practice Plan, only the AMEX, CBOE, NASD and NYSE were DOEAs. On May 23, 2000, the Commission approved an Amendment to the Options-related Sales Practice Plan that added ISE as a participant.[11] On November 8, 2002, the Commission approved another Amendment that replaced the Options-related Sale Practice Plan in its entirety and, among other things, allocated regulatory responsibilities among all the participants in a more equitable manner (''Revised Options-related Sales Practice 17d–2 Plan'').[12] The current proposed plan between ISE and NASD transfers to the NASD all the regulatory responsibilities for each common member allocated to the ISE under the Revised Options-related Sales Practice 17d–2 Plan.

The text of the proposed ISE/NASD Options-related Sales Practice 17d–2 Plan is as follows:

Agreement Between the National Association of Securities Dealers, Inc., and the International Securities Exchange, Pursuant to Section 17(d) and Rule 17d–2

This agreement (Agreement) pursuant to section 17(d) of the Securities Exchange Act of 1934 (Act) and Rule 17d–2 thereunder is by and between the National Association of Securities Dealers, Inc. (NASD), a Delaware Corporation registered as a national securities association subject to regulation by the Securities and Exchange Commission under the Act, whose principal offices are located at 1735 K Street, NW., Washington, DC 20006, and the International Securities Exchange, Inc. (ISE), a New York corporation whose principal place of business is located at 60 Broad Street, New York, NY 10004 (NASD and ISE are collectively referred to as Parties).

In consideration of the mutual covenants contained hereafter, and in consideration of other valuable consideration, NASD and ISE hereby agree as follows:

1. *Term.* This Agreement shall be effective on the date the SEC approves this Agreement under section 17(d) (Effective Date).

2. *Entities.* ISE is a self-regulatory organization (SRO), as defined in section 3(a)(26) of the Act. NASD is a registered securities association, as defined in section 15A of the Act and an SRO, and is responsible for fulfilling

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[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated April 30, 2003. Amendment No. 1 deleted paragraphs 5.1 and 5.2 of the ISE/NASD Options-related Sale Practice 17d–2 Plan filed on January 7, 2003.

[4] 15 U.S.C. 78s(g)(1).

[5] 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2).

[6] 15 U.S.C. 78q(d). *See also* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session. 32 (1975).

[7] 17 CFR 240.17d–1 and 17 CFR 240.17d–2.

[8] Securities Exchange Act Release No. 12352, 41 FR 18809 (May 3, 1976).

[9] Securities Exchange Act Release No. 12935, 41 FR 49093 (November 8, 1976).

[10] Securities Exchange Act Release No. 20158, 48 FR 41256 (September 14, 1983). The participation in this plan were the American Stock Exchange LLC (''AMEX'') the Chicago Board Options Exchange, Inc. (''CBOE''), the Midwest Stock Exchange, Inc., NASD, the New York Stock Exchange, Inc. (''NYSE''), the Pacific Stock Exchange, Inc. and the Philadelphia Stock Exchange, Inc.

[11] Securities Exchange Act Release No. 42816 (May 23, 2000); 65 FR 34759 (May 31, 2000). This Amendment also updated the corporate names of the AMEX, the Midwest Stock Exchange (now known as the Chicago Stock Exchange, Inc.), and the Pacific Stock Exchange Incorporated (now known as the Pacific Exchange, Inc.).

[12] Securities Exchange Act Release No. 46800, 67 FR 69774 (November 19, 2002).

certain regulatory obligations and performing certain regulatory functions under the Act.

3. *Members.* The Parties have brokers or dealers as their members, and some of the brokers or dealers are members of both Parties (hereinafter, members of both Parties and persons associated with such members are referred to collectively as Common Members). Each Party hereto has regulatory obligations under the Act and the rules of the Party for Common Members.

4. *Structure.* The Parties are participants in a multiparty options 17d–2 Agreement by and among the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., ISE, NASD, the New York Stock Exchange, the Pacific Exchange Inc., and the Philadelphia Stock Exchange (''Multiparty 17d–2 Agreement''). Under the Multiparty 17d–2 Agreement, ISE is assigned as Designated Options Examining Authority (''DOEA'') for certain Common Members. Under the Multiparty 17d–2 Agreement, a DOEA has examination and enforcement responsibilities (''Regulatory Responsibilities'') relating to compliance by a Common Member and persons associated with such Common Member for certain Common Rules (as defined in the Multiparty 17d–2 Agreement) insofar as they apply to the conduct of accounts for listed options and index options (the ''Covered Rules'').

5. *Services.* NASD shall perform all the Regulatory Responsibilities (as set forth in the Multiparty 17d–2 Agreement, as amended (attached hereto as Exhibit 1–A)), for each Common Member that is allocated to ISE under the Multiparty 17d–2 Agreement as if NASD were the Designated Options Examining Authority (the ''Covered Member'').

6. *Fees.* NASD will charge ISE and ISE shall pay NASD a fee for services performed under this Agreement. In the event that NASD raises its rates in excess of what has been agreed to by the parties, NASD will provide ISE with ninety (90) days advance written notice of its intent. ISE will then have thirty (30) days from the date of such notification to inform NASD that ISE will perform for itself the applicable regulatory responsibilities allocated NASD under the Agreement or enter into an agreement pursuant to applicable rules of the SEC with respect to the performance of such responsibilities. ISE's failure to pay for services performed is a material breach of this Agreement.

7. *Indemnification.* Neither Party, including respective directors, governors, officers, employees and agents, will be liable to the other Party and its directors, governors, officers, employees and agents for liability, loss or damage resulting from any delays, inaccuracies, errors or omissions with respect to its performing or failing to perform regulatory responsibilities, obligations, or functions, except in instances of gross negligence, willful misconduct or reckless disregard, or breach of confidentially. Both Parties understand and agree with each other that the regulatory responsibilities are being performed on a good faith and best effort basis and no warranties, express or implied, are made by either Party to the other Party with respect to any of the responsibilities to be performed by either of these Parties hereunder.

8. *Arbitration.* Any claim, dispute, controversy or other matter in question with regard to the Agreement that cannot be resolved by negotiation between the Parties shall be submitted to arbitration in accordance with the rules and regulations of the American Arbitration Association, provided, however, that (1) submission of any such claim, dispute, controversy or other matter in question to the American Arbitration Association shall not be required if the Parties agree upon another arbitration forum, (2) the foregoing shall not preclude either Party from pursuing all available administrative, judicial or other remedies for infringement of a registered patent, trademark, service mark or copyright, (3) the Parties shall not submit claims for punitive damages and do hereby waive any right to the same, and (4) the arbitrators shall not be authorized to award punitive damages.

9. *SEC Approval.*

(a) The Parties agree to promptly file this Agreement with the SEC for its review and approval.

(b) If approved by the SEC, the Parties agree to send out a joint notice to Covered Members to announce this Agreement.

10. *Special or Cause Examinations.* Nothing in this Agreement shall restrict or in any way encumber the right of a Party to conduct special or cause examinations of Covered Members as either Party, in its sole discretion, shall deem appropriate or necessary.

11. *Definitions.* Unless otherwise defined in this Agreement, or unless the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Act and the rules and regulations thereunder.

12. *Subsequent Parties; Limited Relationship.* This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective legal representatives, successors, and assigns. Nothing in this Agreement, expressed or implied, is intended to or shall (i) confer on any person other than the Parties hereto, or their respective legal representatives, successors, and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, (ii) constitute the Parties hereto partners or participants in a joint venture, or (iii) appoint one Party the agent of the other.

13. *Assignment.* Neither Party may assign the Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that either Party may assign the Agreement to a corporation controlling, controlled by or under common control with the assigning Party without the prior written consent of the other Party.

14. *Severability.* Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

15. *Termination.*

(a) *Termination for Cause.* Either Party may terminate the Agreement due to breach by the other Party. The Party aggrieved by the breach shall give written notice to the other Party that the Agreement shall be terminated not earlier than sixty (60) calendar days from receipt of the notice, and such notice shall state with specificity the grounds for termination. If the breach is curable, the Party in breach will have the right to cure such breach prior to the date stated for termination, and, should the breach be cured and written notice of such cure served on the aggrieved Party prior to the date stated for termination, such notice shall vacate the notice to terminate.

(b) *Termination for Convenience.* Either Party may terminate the Agreement for any other reason by giving written notice to the other Party that the Agreement will terminate not less than ninety (90) days from receipt of the notice. The notice will specify the basis for termination. ISE will pay NASD the amount due for authorized work and expenses incurred in completion of such authorized work as of the effective date of termination.

16. *General obligations.* The Parties agree to perform all acts and execute all supplementary instruments or documents that may be reasonably necessary or desirable to carry out the provisions of this Agreement.

17. *Liaison and Notices.* All questions regarding the implementation of this Agreement shall be directed to the persons identified in subsections (a) and (b), as applicable, below. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon (i) actual receipt by the notified Party or (ii) constructive receipt (as of the date marked on the return receipt) if sent by certified or registered mail, return receipt requested, to the following addresses:

(a) *If to NASD:*
NASD, 9509 Key West Avenue, Rockville, Maryland 20850, *Attn:* Jim Price.
With, if a notice of breach or default, a required copy to:
National Association of Securities Dealers, Inc., 1735 K Street, NW., Washington, DC 20006, *Attn:* Office of General Counsel—Contracts Group.

(b) *If to ISE:*
International Securities Exchange, Inc., 60 Broad Street, 26th Floor, New York, NY 10004, *Attn:* Legal Department.
With, if a notice of breach or default, a required copy to:
Same address as above.

18. *Regulatory responsibility.* Pursuant to section 17(d)(1)(A) of the Act, and Rule 17d–2 thereunder, NASD and ISE jointly request the SEC, upon its approval of this Agreement, to relieve ISE of any and all responsibilities with respect to the matters performed by NASD pursuant to this Agreement for purposes of sections 17(d) and 19(g) of the Act.

19. *Governing Law.* This Agreement shall be deemed to have been made in the State of New York and shall be construed and enforced in accordance with the law of the state of New York, without reference to principles of conflicts of laws thereof. Each of NASD and ISE hereby consents to submit to the jurisdiction of the courts by or for the State of New York in connection with any action or proceeding relating to this Agreement.

20. *Survival of Provisions.* Provisions intended by their terms or context to survive and continue notwithstanding delivery of the Services by NASD, the payment of the price by ISE, and any expiration of this Agreement shall survive and continue, including but not limited to, the items referred to in Sections 6, 8, and 9.

III. Solicitation of Comments

In order to assist the Commission in determining whether to approve this plan and to relieve the ISE of those responsibilities designated to the NASD, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission 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 plan that are filed with the Commission, and all written communications relating to the proposed plan 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 ISE. All submissions should refer to File No. S7–966 and should be submitted by June 13, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–12730 Filed 5–20–03; 8:45 am]

BILLING CODE 8010–01–M

DIA—DIAMONDS®
QQQ—Nasdaq-100® Index Tracking Stock
SPY—SPDR®
IVV—iShares S&P 500
MDY—MidCap SPDRs
XLY—Select Sector SPDR-Consumer Discretionary

XLP-Select Sector SPDR-Consumer Staples
XLE-Select Sector SPDR-Energy

BHH-B2B Internet HOLDRs™
BBH-Biotech HOLDRs
BDH-Broadband HOLDRs
EKH-Europe 2001 HOLDRs
IAH-Internet Architecture HOLDRs
HHH-Internet HOLDRs
IIH-Internet Infrastructure HOLDRs
MKH-Market 2000+ HOLDRs
OIH-Oil Service HOLDRs

[13] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47858; File No. SR–Amex–2003–40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Extend the Suspension of Transaction Charges for Certain Exchange-Traded Funds

May 14, 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 May 1, 2003, the American Stock Exchange LLC (''Amex'') filed with the Securities and Exchange Commission (''SEC'' or ''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.

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

The Amex proposes to extend until May 31, 2003 the suspension of Exchange transaction charges for specialist, Registered Trader, and broker-dealer orders for the iShares Lehman 1–3 year Treasury Bond Fund; iShares Lehman 7–10 year Treasury Bond Fund; Treasury 10 FITR ETF; Treasury 5 FITR ETF; Treasury 2 FITR ETF; and Treasury 1 FITR ETF. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

AMEX Equity Fee Schedule

I. Transaction Charges
No change.
II. Regulatory Fee
No Change.
Notes:
1. and 2. No change.
3. Customer transaction charges for the following Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts have been suspended:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.