

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58704; File No. SR-NYSEArca-2008-92)

October 1, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing of MacroShares Major Metro Housing Trusts

On August 25, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (“NYSE Arca Equities”), filed with the Securities and Exchange Commission (“Commission”) 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 to list and trade shares of the MacroShares Major Metro Housing Up Trust (“Up Trust”) and the MacroShares Major Metro Housing Down Trust (“Down Trust”) (collectively, the “Trusts”).³ The proposed rule change was published in the Federal Register on September 15, 2008 for a 15-day comment period.⁴ The Commission received no comments on the proposal. This order grants approval to the proposed rule change on an accelerated basis.

I. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.400, which governs the listing of Paired Trust Shares.⁵ The Shares will satisfy the initial and continued listing criteria applicable to Paired Trust Shares, which are set forth in NYSE Arca Equities Rule 8.400(d).⁶

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Shares of the Up Trust and the Down Trust are referred to collectively as “Shares.”

⁴ See Securities Exchange Act Release No. 58469 (September 5, 2008), 73 FR 53306 (“Notice”).

⁵ The Shares are “Trading Shares” as defined in NYSE Arca Equities Rule 8.400(b)(1)(B).

⁶ See email from Michael Cavalier, Associate General Counsel, NYSE Euronext, to Christopher Chow, Senior Counsel, Commission, dated September 26, 2008.

Description of the Trusts and the Shares

The Up MacroShares and the Down MacroShares will be offered by the Up Trust and the Down Trust, respectively, established by MACRO Inflation Depositor, LLC, as depositor, under the laws of the State of New York. The Trusts are not registered with the Commission as investment companies.⁷ Distributions from the Trusts will be based on the value of the S&P/Case-Shiller Composite-10 Home Price Index (“Index”), as well as on prevailing interest rates on U.S. Treasury obligations. The last published value of the S&P/Case-Shiller Composite-10 Home Price Index is referred to as the “Reference Value of the Index” or “Reference Value” (as defined in the Notice). The S&P/Case-Shiller Home Price Indices measure the change in home prices in one or several geographic regions of the United States. They are calculated monthly and are publicly available for 20 major metropolitan areas.⁸

Additional information regarding the Shares may be found in the Notice,⁹ including but not limited to discussions of the Shares and Trusts, the Reference Value of the Index, the

⁷ The Shares are being offered by the Trusts under the Securities Act of 1933, as amended, 15 U.S.C. 77a. On August 6, 2008, the depositor filed with the Commission Registration Statements on Form S-1 (Amendment No. 1) for the Up MacroShares (File No. 333-151522) (“Up Trust Registration Statement”) and for the Down MacroShares (File No. 333-151523) (“Down Trust Registration Statement,” and, together with the Up Trust Registration Statement, “Registration Statements”). Descriptions herein relating to the operation of the Trusts and the S&P/Case-Shiller Home Price Indices are based on the Registration Statements. Additionally, unless otherwise stated herein, defined terms have same meaning set forth in the Registration Statements.

⁸ The S&P/Case-Shiller Composite-10 Home Price Index is a weighted average of the following 10 S&P/Case-Shiller Metro Area Home Price Indices: the S&P/Case-Shiller Boston Home Price Index, the S&P/Case-Shiller Chicago Home Price Index, the S&P/Case-Shiller Denver Home Price Index, the S&P/Case-Shiller Las Vegas Home Price Index, the S&P/Case-Shiller Los Angeles Home Price Index, the S&P/Case-Shiller Miami Home Price Index, the S&P/Case-Shiller New York City Area Home Price Index, the S&P/Case-Shiller San Diego Home Price Index, the S&P/Case-Shiller San Francisco Home Price Index, and the S&P/Case-Shiller Washington, D.C. Home Price Index.

⁹ See supra note 4.

S&P/Cas-Shiller Home Price Indices and the Index, the eligibility criteria, the MSA Index construction, the weighting of sales pairs, the Index governance, the Termination Triggers, the calculation of the Underlying Value, the availability of information, the initial and continued listing criteria, trading halts, trading rules, surveillance, and the Information Bulletin.

II. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act¹⁰ and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹² which requires, among other things, that the Exchange's rules be 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. The Commission notes that, for the Shares to be listed and traded on the Exchange, such Shares must be in compliance with the initial and continued listing requirements under NYSE Arca Equities Rule 8.400.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹³ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information

¹⁰ 15 U.S.C. 78f.

¹¹ In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78k-1(a)(1)(C)(iii).

with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the CTA high-speed line. The Exchange further states that information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day via electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of major newspapers and will be available from major market data vendors.

The current Index level is available through major market data vendors (e.g., Bloomberg, and Reuters), and historical data regarding the Index and the Indices are published at www.indices.standardandpoors.com.

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation on behalf of the Trusts that the per share values of the Up MacroShares and DownMacroShares will be calculated daily and made available to all market participants at the same time. Additionally, if it becomes aware that the per share value of either the Up MacroShares or DownMacroShares is not disseminated daily to all market participants at the same time, the Exchange will halt trading in the Shares until that information is available to all market participants.

Though the Exchange has stated that the Index Committee has "complete discretion" to determine how the Index and its related indices are calculated, an Exchange's obligations under Section 19(b) of the Act and Rule 19b-4 thereunder are independent of any discretion the Index Committee may have. Thus, the Exchange must monitor changes to the Shares, including any change to the calculation of the Index. The Exchange must assess whether any changes to the

Shares would require it to submit a proposed rule change in accordance with Section 19(b)(1) of the Act¹⁴ and Rule 19b-4 thereunder,¹⁵ or take any other action as appropriate, including halting trading of the Shares.

The Exchange has represented that the Shares are equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made the following representations:

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.400.¹⁶
- (2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.
- (3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares, prospectus delivery requirements, and other information, as described in more detail in the Notice.¹⁷

This approval order is based on the Exchange's representations.

III. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁸ for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the

¹⁴ 15 U.S.C. 78s(b)(1).

¹⁵ 17 CFR 240.19b-4.

¹⁶ See supra note 6.

¹⁷ See supra note 4.

¹⁸ 15 U.S.C. 78s(b)(2).

Federal Register. The Commission has received no comments regarding the proposed rule change, and the Commission finds that the proposed rule change does not raise any novel regulatory issues. Additionally, the Commission believes that accelerating approval of this proposal should benefit the market by making available to investors, without undue delay, additional products in the market for Paired Trust Shares.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-NYSEArca-2008-92) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon
Acting Secretary

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).