

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59070; File No. SR-NASDAQ-2008-092)

December 9, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Trade the Shares of the MacroShares \$100 Oil Up Trust and the MacroShares \$100 Oil Down Trust

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 December 1, 2008, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a rule change under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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

Nasdaq proposes to trade, pursuant to unlisted trading privileges (“UTP”), shares of the MacroShares \$100 Oil Up Trust (“Up Trust”) and the MacroShares \$100 Oil Down Trust (“Down Trust”, and, together with the Up Trust, the “Trusts”). The shares of the Up Trust are referred to as the Up MacroShares, and the shares of the Down Trust are referred to as the Down MacroShares (collectively, the “Shares”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available from Nasdaq's Web site at <http://nasdaq.cchwallstreet.com>, at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to trade the Shares pursuant to UTP. The Commission has recently approved the substantially identical filing of NYSE Arca, Inc. for the listing and trading of the same product.⁵ Also, the Commission has previously approved the listing and/or trading of a product similar to the Shares.⁶ The Up MacroShares and the Down

⁵ See Securities Exchange Act Release No. 58873 (October 28, 2008), 73 FR 65709 (November 4, 2008) (SR-NYSEArca-2008-110) ("NYSE Arca Order").

⁶ The Commission approved the trading of a similar product on Nasdaq pursuant to UTP when it approved Securities Exchange Act Release No. 55740 (May 10, 2007) (SR-NASDAQ-2007-048), 72 FR 27889 (May 17, 2007) (approving UTP trading of Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares). See also Securities Exchange Act Release No. 55033 (December 29, 2006), 72 FR 1253 (January 10, 2007) (SR-NYSEArca-2006-75) (approving UTP trading of Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares). The Commission also approved such product for listing and trading on the American Stock Exchange LLC. See Securities Exchange Act Release No. 54839 (November 29, 2006), 71 FR 70804 (December 6, 2006) (SR-Amex-2006-82)

MacroShares will be offered by the Up Trust and the Down Trust, respectively, established by MACRO Securities 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 The Trusts are currently listed on NYSE Alternext US LLC (“NYSE Alternext US” (formerly, the American Stock Exchange LLC (“Amex”)) and are traded pursuant to UTP.⁸ Prior to listing on NYSE Arca, Inc., the Trusts would be required to satisfy the applicable delisting procedures of NYSE Alternext US and applicable statutory and regulatory requirements, including, without limitation, Section 12 of the Act,⁹ relating to listing the Shares on NYSE Arca, Inc.¹⁰

Nasdaq deems the Shares to be equity securities, thus rendering the trading in the Shares subject to its existing rules governing the trading of equity securities, including Nasdaq Rule 4630, which governs trading of Commodity-related Securities. The Shares

(approving listing and trading Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares).

⁷ The Shares are being offered by the Trusts under the Securities Act of 1933, as amended. On April 17, 2008, the depositor filed with the Commission a Registration Statement on Form S-1 for both the Up MacroShares (File No. 333-150282-01) (“Up Trust Registration Statement”) and the Down MacroShares (File No. 333-150282-02) (“Down Trust Registration Statement” and together with the Up Trust Registration Statement, the “Registration Statements”).

⁸ See Securities Exchange Act Release No. 58057 (June 30, 2008), 73 FR 38474 (July 7, 2008) (SR-Amex-2008-36) (order approving listing of the Trusts on the Amex) (“Amex Order”); Securities Exchange Act Release No. 58058 (June 30, 2008), 73 FR 38484 (July 7, 2008) (SR-NYSEArca-2008-65) (order approving trading of the Trusts on the Exchange pursuant to UTP).

⁹ 15 U.S.C. 78(l).

¹⁰ NYSE Arca, Inc. has represented that it will seek the voluntary consent of the issuer of the Shares to be delisted from NYSE Alternext US and listed on NYSE Arca, Inc. NYSE Arca, Inc. has noted that its approval of the Trusts’ listing applications would be required prior to listing. See NYSE Arca Order, supra note 3, 73 FR at 65710.

will trade on Nasdaq from 7:00 a.m. until 8:00 p.m. Eastern Time (“ET”).¹¹ The Trusts have represented that they are relying on the exemption provided for passive trusts under Rule 10A-3(c)(7)¹² under the Act with respect to establishment of an independent audit committee.

More information regarding the Shares, the Trusts, the Applicable Reference Price of Crude Oil, quarterly distributions, final distributions, underlying values, risks, fees and expenses, termination triggers, and creation and redemption procedures can be found in the Registration Statements and the Amex Order.¹³

Availability of Information

Intraday Indicative Values. Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Tape Association (“CTA”).

Throughout each price determination day, NYSE Alternext US, acting as the calculation agent for each Trust, will calculate and disseminate, at least every 15 seconds from 9:30 a.m. until 4:15 p.m. during the time the Shares trade on Nasdaq, through the facilities of the CTA, an estimated value (referred to as an “Intraday Indicative Value” or “IIV”) for the underlying value per Share of both the Up MacroShares and the Down MacroShares. The purpose of this disclosure is to promote liquidity and intraday pricing transparency with respect to these estimated per-Share underlying values, which can be used in connection with other related market information. To enable this calculation, the NYSE

¹¹ See E-mail from Jonathan Cayne, Associate General Counsel, NASDAQ OMX to Mitra Mehr, Special Counsel, Division of Trading and Markets, Commission, dated December 8, 2008 (clarifying trading hours).

¹² 17 CFR 240.10A-3(c)(7).

¹³ Terms relating to the Trusts referred to, but not defined herein, are defined in the Registration Statements.

Alternext US will receive real time price data from the NYMEX through two major market data vendors for the light sweet crude oil futures contract of the designated maturity that trades on the NYMEX.

Because the NYMEX market for the light sweet crude oil futures contract will be closed for portions of the period from 9:30 a.m. until 4:15 p.m. ET, the IIV calculated values will become fixed and will not be updated at such times that the NYMEX contract is not trading.¹⁴ Conversely, at times when the light sweet crude oil futures contract of the designated maturity is trading on NYMEX, those trades will be used to update the IIV values.

Availability of Other Information and Data. At the end of each price determination day, NYSE Alternext US will also calculate the premium or discount of the midpoint of the bid/offer for the Up MacroShares at their close relative to the underlying value of one of those Shares for that price determination day. NYSE Alternext US will also perform the same calculation with respect to the Down MacroShares. MacroMarkets LLC (“MacroMarkets”) will then post these premiums/discounts, together with the end-of-day price information for the Shares, on its Web site at www.macromarkets.com. Further, MacroMarkets will post on its Web site the Applicable Reference Price of Crude Oil that was reported by NYMEX for any price determination day. NYSE Arca, Inc. also intends to disseminate a variety of data with respect to the Shares on a daily basis by means of CTA and CQ High Speed Lines,

¹⁴ The IIV calculated during the period following the daily opening of the regular session trading at 9:30 a.m. but prior to any trades taking place on the NYMEX in the relevant light sweet crude oil futures contract will be based on the final price of the futures contract on the prior trading day.

including quotation and last sale data information.

On each price determination day, State Street Bank and Trust Company, the trustee for the Trusts, will calculate the underlying value of the Up Trust and the Down Trust and the per-Share underlying value of one Up MacroShare and one Down MacroShare, based on the Applicable Reference Price of Crude Oil established and reported by NYMEX. The trustee will then provide such values to MacroMarkets, which will post them on its Web site, and information posted on such Web site will be made available to all market participants at the same time. All investors and market participants will have access to MacroMarkets' Web site at no charge. Information regarding secondary market prices and volume of the Shares will be broadly available on a real-time basis throughout the trading day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers.

Trading Halts

Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a halt include a regulatory halt by the listing market. UTP trading in the Shares will also be governed by provisions of Nasdaq Rule 4120(b) relating to temporary interruptions in the calculation or wide dissemination of the IIV. Additionally, Nasdaq may cease trading the Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Nasdaq also will stop trading the Shares if the listing market delists them.

If the Exchange becomes aware that the underlying value per Share of each Up Share and Down Share is not disseminated to all market participants at the same time, it will halt trading in the Up MacroShares or the Down MacroShares, as the case may be, until such time as the underlying value per share is available to all market participants.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to its existing rules governing the trading of equity securities, including Rule 4630, which governs trading of Commodity-Related Securities. The trading hours for the Shares on the Exchange would be 7:00 a.m. to 8:00 p.m., ET, unless such trading hours are changed by a subsequent rule change.

Surveillance

Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the Shares on Nasdaq. Trading of the Shares through Nasdaq will be subject to FINRA's surveillance procedures for equity securities in general and ETFs in particular.¹⁵ The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG.¹⁶

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the

¹⁵ FINRA surveils trading on Nasdaq pursuant to a regulatory services agreement. Nasdaq is responsible for FINRA's performance under this regulatory services agreement.

¹⁶ For a list of the current members and affiliate members of ISG, see www.isgportal.com.

Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares of the Trusts (and that Shares are not individually redeemable); (2) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the IIV is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated IIV will not be calculated or publicly disseminated; and (6) trading information.

The Exchange notes that investors purchasing Shares directly from a Trust will receive a prospectus. Members purchasing Shares from a Trust for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Shares are subject to various fees and expenses described in the Registration Statements. The Information Circular will also reference that the CFTC has regulatory jurisdiction over the trading of futures contracts.

The Information Circular will also disclose the trading hours of the Shares and that the NAV for the Shares will be calculated after 4:00 p.m. ET each trading day. The Information Circular will disclose that information about the Shares and the corresponding Indexes will be publicly available on the Shares' Web site.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act¹⁷ in general and Section 6(b)(5) of the Act¹⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission has approved the NYSE Arca, Inc. listing and trading of the Shares.¹⁹

In addition, Nasdaq believes that the proposal is consistent with Rule 12f-5 under the Act²⁰ because it deems the Shares to be an equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities.

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

Nasdaq 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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ See supra note 5.

²⁰ 17 CFR 240.12f-5.

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²²

Nasdaq has asked the Commission to waive the 30-day operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest because such waiver should benefit investors by creating, without undue delay, additional competition in the market for the Shares. The Commission has previously approved the listing and trading of the Shares on another exchange²³ and does not believe that the proposed rule change presents any novel or significant regulatory issues. Therefore, the Commission designates the proposed rule change as operative upon filing.²⁴

At any time within 60 days of the filing of the 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

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(6). The Commission notes that Nasdaq has satisfied the five day pre-filing notice requirement.

²³ See supra note 5.

²⁴ For purposes only of waiving the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2008-092 on the subject line.

Paper Comments:

- Send paper comments in triplicate to the Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090

All submissions should refer to File Number SR-NASDAQ-2008-092. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site <http://www.sec.gov/rules/sro.shtml>. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information

that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2008-092 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

Florence E. Harmon
Acting Secretary