

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55033; File No. SR-NYSEArca-2006-75)

December 29, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Relating to Trading Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares Pursuant to Unlisted Trading Privileges

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 October 10, 2006, NYSE Arca, Inc. (the “Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On November 9, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Exchange filed Amendment No. 2 to the proposed rule change on December 12, 2006.⁴ The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the original filing in its entirety.

⁴ In Amendment No. 2, the Exchange, among other things, (1) added proposed NYSE Arca Equities Rule 8.400(e)(1) and (4) relating to limitations on dealings of certain Market Makers in order to address potential conflicts of interest in connection with acting as a Market Maker in Paired Trust Shares, (2) added proposed NYSE Arca Equities Rule 8.400(e)(2)-(3) to ensure that Market Makers handling the Paired Trust Shares provide the Exchange with all the necessary information relating to their trading in the asset, commodity or other economic interest underlying the Reference Price for the Paired Trust Shares, or their trading in any related derivatives, (3) revised the description of the offering process for the MACRO Tradeable Shares and the MACRO Holding Shares to reflect that there will be a continuous creation and offering of MACRO Tradeable Shares and MACRO Holding Shares by Authorized Participants, (4) eliminated the rule text providing for possible recapitalization of the Holding Trusts based on specified events, (5) revised the continued listing standards (in the event that the Exchange is the listing market for a series of Paired Trust Shares in the future) in

Commission is publishing this notice and order to solicit comment on the proposed rule change, as amended, from interested persons and to approve the proposed rule change and Amendment Nos. 1 and 2 thereto on an accelerated basis.

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

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, proposes to amend its rules governing NYSE Arca, LLC (also referred to as the “NYSE Arca Marketplace”), the equities trading facility of NYSE Arca Equities. The Exchange proposes new NYSE Arca Equities Rule 8.400 to permit trading, either by listing or pursuant to unlisted trading privileges (“UTP”), of “Paired Trust Shares.” Pursuant to this proposed new rule, the Exchange initially proposes to trade, pursuant to UTP: (1) Claymore MACROshares Oil Up Tradeable Shares (the “Up-MACRO⁵ Tradeable Shares”) and (2) Claymore MACROshares Oil Down Tradeable Shares (the “Down-MACRO Tradeable Shares” and together with the Up-MACRO Tradeable Shares, the “MACRO Tradeable Shares”).

The MACRO Tradeable Shares are issued by and represent an undivided beneficial interest in (1) the Claymore MACROshares Oil Up Tradeable Trust (the “Up-

proposed NYSE Arca Equities Rule 8.400(d) to require the availability on an intraday basis at 15-second intervals of certain market data and estimates of per share underlying values, to require the underlying value of each paired Holding Trust to be available on a daily basis to all market participants at the same time, and to require the Exchange to file a proposed rule change pursuant to Rule 19b-4 of the Act if a substitute index or other replacement benchmark is selected for the determination of the Reference Price, (6) clarified certain trading rules applicable to the MACRO Tradeable Shares, and (7) made a number of other corrections and clarifications to the description in the Purpose Section of the characteristics of the MACRO Holding Trusts, MACRO Tradeable Trusts, MACRO Holding Shares and the MACRO Tradeable Shares.

⁵ MACRO® is a federally-registered servicemark of MacroMarkets LLC (“MacroMarkets”).

MACRO Tradeable Trust”) and (2) the Claymore MACROshares Oil Down Tradeable Trust (the “Down-MACRO Tradeable Trust”), respectively. The assets of these trusts (collectively, the “MACRO Tradeable Trusts”) each will consist exclusively of a majority of the Claymore MACROshares Oil Up Holding Shares (“Up-MACRO Holding Shares”) issued by the Claymore MACROshares Oil Up Holding Trust (“Up-MACRO Holding Trust”) and the Claymore MACROshares Oil Down Holding Shares (“Down-MACRO Holding Shares”) issued by the Claymore MACROshares Oil Down Holding Trust (“Down-MACRO Holding Trust”).⁶

The text of the proposed rule change is available on the Exchange’s Web site at www.nysearca.com, at the principal office of the Exchange 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, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

⁶ The Up-MACRO Holding Shares and Down-MACRO Holding Shares (collectively, MACRO Holding Shares”) will not be listed or traded on the Exchange.

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

(1) Purpose

The Exchange proposes to add new NYSE Arca Equities Rule 8.400 to permit trading, either by listing or pursuant to UTP, of securities issued by a pair of related trusts and based on an index or other numerical variable (“Reference Price”) whose value reflects the value of assets, prices or other economic interests. When the Exchange is the listing market for Paired Trust Shares, the Paired Trust Shares will be subject to the continued listing and trading criteria under proposed new NYSE Arca Rule 8.400(d). For each separate and discrete Reference Price that may underlie Paired Trust Shares, the Exchange will submit a filing pursuant to Section 19(b)⁷ of the Act subject to Commission review and approval. The Exchange may eventually seek to revise the proposed listing criteria and trading rules to permit the listing and trading of Paired Trust Shares pursuant to Rule 19b-4(e) under the Act.

Pursuant to proposed NYSE Arca Equities Rule 8.400, the Exchange proposes to trade pursuant to UTP the MACRO Tradeable Shares. The Commission previously approved the listing and trading of the MACRO Tradeable Shares on the American Stock Exchange LLC (“Amex”).⁸

The Exchange deems the MACRO Tradeable Shares to be equity securities, thus rendering trading in the MACRO Tradeable Shares subject to the Exchange's existing rules governing the trading of equity securities. The MACRO Tradeable Shares will trade on the NYSE Arca Marketplace from 9:30 a.m. until 4:15 p.m. (New York time).

⁷ 15 U.S.C. 78s(b).

⁸ See Securities Exchange Act Release No. 34-54839 (SR-Amex-2006-82) (November 29, 2006) (the “Amex Order”).

Quotations for and last sale information regarding the MACRO Tradeable Shares are disseminated through the Consolidated Tape System (“CTS”). During each trading day, the Amex, acting as the calculation agent, will publish to the CTS, at least every 15 seconds during the entire time that the MACRO Tradeable Shares trade on the Amex (normally 9:30 a.m. to 4:15 p.m. each Price Determination Day⁹), an indicative value, referred to as an Indicative Intraday Value (“IIV”), representing the estimated underlying value per share of both the Up-MACRO Tradeable Shares and the Down-MACRO Tradeable Shares. The Amex will also publish these values on its Web site. To enable this calculation, the Amex will receive real time price data from the NYMEX for the light sweet crude oil futures contract that trades on the NYMEX from two major market data vendors, from the opening of trading of the light sweet crude oil futures contract on NYMEX at 10:00 a.m. to the close of trading of the MACRO Tradeable Shares on the Amex at 4:15 p.m. (New York City time). In addition, the closing price of the MACRO Tradeable Shares on the NYSE Arca Marketplace will be available on the Exchange's Web site.

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. to 4:15 p.m. ET, the IIV calculated

⁹ A “Price Determination Day” for this purpose is each day on which trading of the light sweet crude oil futures contract of the designated maturity occurs by open outcry on the trading floor of the NYMEX (located in New York City, New York) through the use of verbal or hand signals, rather than through electronic or other means. Price Determination Days are generally the same as business days – that is, any day other than a Saturday, a Sunday or a day on which banking institutions and stock exchanges in New York, New York are authorized or required by law, regulation or executive order to close. If a substitute reference oil price is being used, the Price Determination Day will be each day on which this price is determined by, or in accordance with the rules of, the substitute oil price provider.

values will become fixed at such time as the NYMEX contract stops trading during this time.¹⁰ From 9:30 a.m. to 4:15 p.m. ET, however, if trading in the NYMEX light sweet crude oil futures contract is occurring on the CME Globex electronic trading platform, then those trades will be used to update IIV values.

The administrative agent, Claymore Securities, will maintain a Web site (www.ClaymoreMacroShares.com) that is publicly accessible at no charge and will contain the following information posted by the trustee on each Price Determination Day:¹¹

- the daily Price Level Percentage Change of the Applicable Reference Price of Crude Oil;
- the daily underlying value¹² of the Up-MACRO Holding Trust and the per share underlying value of the Up-MACRO Holding Shares and the Up-MACRO Tradeable Shares; and

¹⁰ The IIV calculated value between the opening of trading of the MACRO Tradeable Shares at 9:30 a.m. and the opening of trading of the light sweet crude oil futures contract on NYMEX at 10:00 a.m. (New York City time) will be based on the final price from the prior trading day.

¹¹ As a condition of initial listing, the Exchange will receive a representation on behalf of the Holding Trusts and Tradeable Trusts that the underlying value per share of each Holding Share and each Tradeable Share will be calculated daily and will be made available to all market participants at the same time.

¹² The “underlying value” of a MACRO Holding Trust on each Price Determination Day represents the aggregate amount of the assets in the paired MACRO Holding Trusts to which that MACRO Holding Trust would be entitled if the settlement contracts were settled on that day. The determination of the “underlying value” of a MACRO Holding Trust on a given Price Determination Day is calculated using the following formula, which is designed to ensure that a \$1 change in the settlement price of the Applicable Reference Price of Crude Oil will result in a \$1 change in the per share underlying value of each MACRO Holding Share.

- the daily underlying value of the Down-MACRO Holding Trust and the per share underlying value of the Down-MACRO Holding Shares and the Down-MACRO Tradeable Shares.

Pricing and other information for NYMEX light sweet crude oil futures contracts, including those designated to be the Applicable Reference Price, is available through major market data vendors such as Reuters and Bloomberg.

Unless exemptive or no-action relief is available, the MACRO Tradeable Shares will be subject to the short sale rule, Rule 10a-1 under the Securities Exchange Act of 1934, as amended (the “Act”). If exemptive or no-action relief is provided, the Exchange will issue a notice detailing the terms of the exemption or relief.

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 MACRO Tradeable Shares. Specifically, the Information Bulletin will discuss the following: (1) what the MACRO Tradeable Shares are; (2) how they are created and exchanged for MACRO Holding Shares by Authorized Participants (and that MACRO Holding Shares are issuable and redeemable only in MACRO Units); (3) NYSE Arca Equities Rule 9.2(a),¹³ which imposes a duty of due diligence on its ETP Holders to learn

¹³ The Exchange amended NYSE Arca Equities Rule 9.2(a) to provide that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the proposed rule amendment provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders shall make reasonable efforts to obtain information concerning the customer’s financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation. *See* Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR-PCX-2005-115).

the essential facts relating to every customer prior to trading the Shares; (4) dissemination of information regarding the underlying value of each paired MACRO Holding Trust and the share of that underlying value allocable to one Up-MACRO Holding Share, one Up-MACRO Tradeable Share, one Down-MACRO Holding Share and one Down-MACRO Tradeable Share; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued MACRO Tradeable Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Bulletin will reference that the MACRO Holding Trusts and the MACRO Tradeable Trusts are subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the Commission has no jurisdiction over the trading of the NYMEX light sweet crude oil futures contract. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the MACRO Tradeable Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the MACRO Tradeable Shares and to deter and detect violations of Exchange rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)¹⁴ of the Act, in general, and furthers the objectives of Section 6(b)(5)¹⁵ 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 cooperation and coordination with persons engaged in

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In addition, the proposed rule change is consistent with Rule 12f-5¹⁶ under the Act because it deems the MACRO Tradeable Shares to be equity securities, thus rendering the MACRO Tradeable Shares subject to the Exchange's rules governing the trading of equity securities.

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

Written comments on the proposed rule change were neither solicited nor received.

III. 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. 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

¹⁶ 17 CFR 240.12f-5.

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-NYSEArca-2006-75 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-NYSEArca-2006-75. 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. 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 No. SR-NYSEArca-2006-75 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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 exchange.¹⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁸ which requires that an exchange have rules designed, among other things, 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.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,¹⁹ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.²⁰ The Commission notes that it previously approved the listing and trading of the MACRO Tradeable Shares on Amex.²¹ The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,²²

¹⁷ In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 15 U.S.C. 78l(f).

²⁰ Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

²¹ See Amex Order, supra note 7.

²² 17 CFR 240.12f-5.

which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP.²³ The Exchange has represented that it meets this requirement because it deems the MACRO Tradeable Shares to be equity securities, thus rendering trading in the MACRO Tradeable Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,²⁴ 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 with respect to quotations for and transactions in securities.

A. Surveillance

The Commission notes that the Exchange has represented that its surveillance procedures are adequate to monitor trading in the Paired Trust Shares. The Exchange's Information Sharing Agreement with the NYMEX for the purpose of providing information in connection with trading in or related to futures contracts traded on the NYMEX creates the basis for the Exchange to monitor for fraudulent and manipulative practices in the trading of the Paired Trust Shares.

Moreover, adoption of proposed NYSE Arca Equities Rule 8.400(e) should facilitate surveillance because it will require ETP Holders acting as registered Market Makers in the Paired Trust Shares to provide the Exchange with information relating to

²³ The Exchange has adopted in conjunction with the approval of this filing new NYSE Arca Equities Rule 8.400 to permit trading, either by listing or pursuant to UTP, of Paired Trust Shares.

²⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

trading in the asset, commodity or other economic interest underlying the Reference Price, options, related futures or options on futures, or any other related derivatives.

B. Dissemination of Information

Quotations for and last sale information regarding the MACRO Trust Shares are disseminated through the CTS. Furthermore, Amex will publish through the CTS and on its Web site the IIV, representing the estimated underlying value per share of both the UP-MACRO Tradeable Shares and the Down-MACRO Tradeable Shares every 15 seconds during the entire time between 9:30 a.m. to 4:15 p.m.

NYSE Arca Equities Rule 7.34 describes the situations when the Exchange will halt trading. In particular, NYSE Arca Equities Rule 7.34 (a)(4)(B) requires the Exchange to immediately halt trading in the MACRO Tradeable Shares if the listing market halts trading because the IIV or the value of the applicable Index is not calculated or widely disseminated. In cases where the Exchange is acting as the listing market for a series of Paired Trust Shares, the Exchange will halt trading no later than the beginning of the trading day following the interruption if the interruption to the dissemination of the IIVs or the futures contract prices persists past the trading day in which it occurred. The Commission believes that these trading halt rules will help ensure that an appropriate level of transparency exists with respect to MACRO Tradeable Shares to allow for the maintenance of fair and orderly markets.

C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the Paired Trust Shares are consistent with the Act. The Paired Trust Shares will trade as equity securities subject to the Exchange's existing rules

governing the trading of equity securities. The Commission finds that proposed NYSE Arca Equities Rule 8.400(e) establishing certain restrictions on ETP Holders acting as registered Market Makers in Paired Trust Shares is reasonably designed to address potential conflicts of interest in connection with ETP Holders acting as registered Market Makers in Paired Trust Shares.²⁵

The Commission believes that the listing and delisting criteria for the Paired Trust Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Paired Trust Shares. Additionally, the Commission finds that proposed NYSE Arca Equities Rule 8.400(e) is reasonably designed to help ensure that an ETP Holder acting as a Market Maker in Paired Trust Shares provide the Exchange with all the necessary information relating to their trading in the asset, commodity or other economic interest underlying the Reference Price, related options, related futures or options on futures, or any other related derivatives.

The Commission notes that, if the MACRO Tradeable Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the MACRO Tradeable Shares pursuant to this approval order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the MACRO Tradeable Shares.

²⁵ Proposed NYSE Arca Equities Rule 8.400(e) provides that the prohibitions in NYSE Arca Equities Rule 7.26 apply to an ETP Holder acting as a registered Market Maker in Paired Trust Shares.

2. 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 MACRO Tradeable Shares.
3. The Exchange will require ETP Holders to deliver a prospectus to investors purchasing newly issued MACRO Tradeable Shares prior to or concurrently with the confirmation of a transaction and will note this prospectus delivery requirement in the information circular.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the Federal Register. As noted previously, the Commission previously found that the listing and trading of the MACRO Tradeable Shares on Amex is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that earlier finding or preclude the trading of the MACRO Tradeable Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the MACRO Tradeable Shares.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-NYSEArca-2006-75), as amended by Amendment Nos. 1 and 2, be and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Nancy M. Morris
Secretary

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30-3(a)(12).