

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58024; File No. SR-NYSEArca-2008-63)

June 25, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change Relating to the Listing and Trading of Shares of the MacroShares Medical Inflation Trusts

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 June 13, 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”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially 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 amend NYSE Arca Equities Rule 8.400 (Paired Trust Shares), and to list and trade shares of the MacroShares Medical Inflation Up Trust Series 2008-1 (“Up Trust”) and the MacroShares Medical Inflation Down Trust Series 2008-1 (“Down Trust”) (collectively, the “Trusts”) pursuant to that rule. The shares of the Up Trust are referred to as the Up MacroShares, the shares of the Down Trust are referred to as the Down MacroShares, and they are referred to collectively as the “Shares.” The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 IV below. The Exchange 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 proposes to amend NYSE Arca Equities Rule 8.400 (Paired Trust Shares), and to list and trade the Up MacroShares and the Down MacroShares under the rule, as proposed to be amended herein.³ 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.⁴

³ The Commission approved for listing and trading a similar product on the American Stock Exchange. See Securities Exchange Act Release No. 54839 (November 29, 2006), 71 FR 70804 (December 6, 2006) (SR-Amex-2006-82) (approving listing and trading Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares). The Commission also approved this product for trading on the Exchange pursuant to unlisted trading privileges when it approved new NYSE Arca Equities Rule 8.400. See Securities Exchange Act Release No. 55033 (December 29, 2006), 72 FR 1253 (January 10, 2007) (SR-NYSEArca-2006-75) (approving trading Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares).

⁴ The Shares are being offered by the Trusts under the Securities Act of 1933, as amended, 15 U.S.C. 77a. On January 25, 2008, the depositor filed with the Commission Amendment No. 1 to Registration Statement on Form S-1 for the Up MacroShares (File No. 333-147948) ("Up Trust Registration Statement"). The depositor will file with the

a. Amendment to NYSE Arca Equities Rule 8.400

The Exchange proposes to amend NYSE Arca Equities Rule 8.400, which applies to Paired Trust Shares, to accommodate the listing and trading of Shares. In its current form, NYSE Arca Equities Rule 8.400 applies to Paired Trust Shares that consist of Holding Shares and Tradeable Shares.⁵ As described in more detail below, the structure of the series of Paired Trust Shares proposed to be listed and traded on the Exchange pursuant to this proposed rule change varies from the structure of Holding Shares and Tradeable Shares in that there are no Holding Trusts and there is only one set of trusts (the “Up Trust” and the “Down Trust”) instead of two.

Under the proposed amendments to NYSE Arca Equities Rule 8.400(b)(1), the term “Paired Trust Shares” would refer to: (1) both Holding Shares and Tradeable Shares; or (2) solely “Trading Shares,” which is a new defined term in NYSE Arca Equities Rule 8.400(b)(1)(B). Trading Shares would be defined similarly to Holding Shares in current NYSE Arca Equities Rule 8.400(b)(2) (proposed to be renumbered as NYSE Arca Equities Rule 8.400(b)(1)(A)(i)), except that it is not required that a majority of Trading Shares be acquired and deposited in a related Tradeable Trust, as it is with Holding Shares, insofar as Trading Shares do not involve the deposit of Holding Shares in a Tradeable Trust. The term Trading Share would be defined as a security: (1) that is issued by either of a matched pair of trusts (“Trading Trusts”) whose respective underlying values move in opposite directions as the value

Commission a Registration Statement on Form S-1 for the Down MacroShares prior to commencement of trading in the Shares on the Exchange.

⁵ Holding Shares are issued by a matched pair of trusts (“Holding Trusts”) in exchange for cash, and Tradeable Shares are issued by a different pair of trusts (“Tradeable Trusts”) in exchange for the deposit of Holding Shares. These rules accommodated the structure of the Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares previously approved by the Commission. See note 3, supra.

of a specified Reference Price (defined in NYSE Arca Equities Rule 8.400(c)) varies from its starting level; (2) that is issued in exchange for cash; (3) the issuance proceeds of which are invested and reinvested in highly rated short-term financial instruments that mature prior to the next scheduled income distribution date for the security and that serve specified functions; (4) that represents a beneficial interest in the Trading Trust that issued it; (5) the value of which is determined by the underlying value of the related Trading Trust, which underlying value will either (a) increase as a result of an increase in the Reference Price and decrease as a result of a decrease in the Reference Price (in the case of an “Up Trading Share” issued by an “Up Trading Trust”) or (b) increase as a result of a decrease in the Reference Price and decrease as the result of an increase in the Reference Price (in the case of a “Down Trading Share” issued by the paired “Down Trading Trust”); (6) whose issuing Trading Trust enters into one or more settlement contracts and an income distribution agreement with the other paired Trading Trust; (7) that, when timely aggregated in a specified minimum number or amount of securities, along with a specified multiple of that number or amount of securities issued by the other paired Trading Trust, may be redeemed for a distribution of cash and/or securities on specified dates by authorized parties, and (8) that may be subject to early mandatory redemption of all Trading Shares prior to the final scheduled termination date under specified circumstances.

As a result of a recent interpretation by the staff of the Internal Revenue Service relating to the inability to interpose a grantor trust in order to utilize a certain tax reporting form, the Exchange has been notified that the need for the current two-tier trust structure set forth in NYSE Arca Equities Rule 8.400 for Paired Trust Shares is no longer necessary. The Exchange represents that there are no substantive differences between the proposed structure (a single set of Trading Trusts that issue Trading Shares and hold financial instruments) and the current two-

tier structure (a set of Tradeable Trusts that issue Tradeable Shares and hold Holding Shares issued by a set of Holding Trusts that invest in financial instruments).

The Exchange proposes conforming changes in the remainder of NYSE Arca Equities Rule 8.400. Specifically, NYSE Arca Equities Rule 8.400(c) would be amended to provide that, with respect to the value of the “Reference Price” as defined in that rule, the mechanism that incorporates the value of the Reference Price into the value determination for the Paired Trust Shares could consist of settlement contracts and an earnings distribution agreement entered into by and between the paired Trading Trusts that issue the Trading Shares, as well as by and between the paired Holding Trusts that issue the Holding Shares.

NYSE Arca Equities Rule 8.400(d)(1)(i) would be amended to add Trading Trusts to the other entities (i.e., Holding Trusts and Tradeable Trusts) for which the Exchange will establish a minimum number of Paired Trust Shares required to be outstanding at the commencement of trading. NYSE Arca Equities Rule 8.400(d)(1)(ii) would be amended to state that the Exchange will obtain a representation that the underlying value per share of each Up Trading Share and Down Trading Share (in the case of a series with Trading Shares) will be calculated daily and made available to all market participants at the same time.

NYSE Arca Equities Rule 8.400(d)(2) would be amended to state that the Exchange will remove from listing any series of Paired Trust Shares under specified circumstances. Specifically, Trading Trusts, Up Trading Shares and Down Trading Shares would be added to the existing rule for purposes of the distribution and combined market value criteria of such rule (NYSE Arca Equities Rule 8.400(d)(2)(i)).

NYSE Arca Equities Rule 8.400(d)(2)(ii), relating to calculation of the intraday value of the Reference Price, would be amended to state that, for a series of Paired Trust Shares for which

the value of the Reference Price is not updated intraday, such value shall be calculated and available once each trading day. In addition, NYSE Arca Equities Rule 8.400(d)(2)(iii), relating to the availability of intraday indicative values, would be amended to add reference to Trading Shares and to provide an exception for series of Paired Trust Shares that have been approved for listing and trading by the Commission under Section 19(b)(2) of the Act⁶ without the requirement that an intraday indicative value be made available as set forth in subparagraph (iii).

NYSE Arca Equities Rule 8.400(d)(2)(iv) would be amended to clarify that the provision relating to the need to file a proposed rule change pursuant to Rule 19b-4 under the Act⁷ if a substitute index or other replacement benchmark is selected for the determination of the Reference Price applies to Trading Shares as well as Tradeable Shares.

The trading halts provision in NYSE Arca Rule 8.400(d) would be amended to add reference to Trading Shares. The term “Trading Trust” also would be added to the termination provision in NYSE Arca Equities Rule 8.400(d)(2), the trust term provision in NYSE Arca Equities Rule 8.400(d)(3), the trustee requirement provision in NYSE Arca Equities Rule 8.400(d)(4)(i), and the voting rights provision in NYSE Arca Equities Rule 8.400(d)(5).

NYSE Arca Equities Rule 8.400(f) (Limitation of Corporation Liability) would be amended to substitute “trusts” for “Holding Trusts” in the provision relating to underlying values of the trusts, in order to encompass Tradeable Trusts.

b. Description of the Shares and the Trusts

The Up Trust and the Down Trust intend to issue Up MacroShares and Down MacroShares, respectively, on a continuous basis at the direction of authorized participants, as described in more detail below. The Up MacroShares and the Down MacroShares represent

⁶ 15 U.S.C. 78s(b).

undivided beneficial interests in the Up Trust and the Down Trust, respectively.

The assets of each Trust will consist of an income distribution agreement and settlement contracts entered into with the other Trust.⁸ Under the income distribution agreement, as of any distribution date, each Trust will either: (1) be required to pay a portion of its available income to the other Trust; or (2) be entitled to receive all or a portion of the other Trust's available income, based, in each case, on the Applicable Reference Value of Medical Inflation (the "Applicable Reference Value," as defined below) for each day during the preceding calculation period. Under each settlement contract, in connection with the final scheduled termination date, an early termination date or any redemption date, each Trust will either: (1) be required to make a final payment out of its assets to the other Trust; or (2) be entitled to receive a final payment from the other Trust out of the assets of the other Trust, based, in each case, on the Applicable Reference Value for the period from the closing date through the date of redemption. Each Trust will also hold U.S. Treasuries and repurchase agreements on U.S. Treasuries to secure its obligations under the income distribution agreement and the settlement contracts.

Each Trust will make quarterly distributions of income on the treasuries and a final distribution of all assets it holds on deposit on the final scheduled termination date, an early termination date or a redemption date. Each quarterly and final distribution will be based on the value for the medical care component of the Consumer Price Index for All Urban Consumers ("CPI-U"), as calculated and published monthly by the Bureau of Labor Statistics ("BLS") at www.bls.gov.⁹ The medical care component of the CPI-U reflects inflation in the cost of

⁷ 17 CFR 240.19b-4.

⁸ The Exchange states that the income distribution agreement and applicable settlement contracts will be attached as Exhibits to the Registration Statement.

⁹ The BLS publishes a summary of its methodology for calculating the CPI at www.bls.gov/cpi/. In addition, a manual entitled BLS Handbook of Methods, in which a

medical goods and services. The Applicable Reference Value is a daily linear interpolation based on the monthly values of the medical care component of the CPI-U for the preceding two months, and is the Reference Price for purposes of NYSE Arca Equities Rule 8.400, on the basis of which quarterly and final distributions on the Up MacroShares and Down MacroShares are calculated. The Applicable Reference Value is determined for each calendar day using a formula set forth in the Up Trust Registration Statement.¹⁰ For purposes of determining the Applicable

chapter is dedicated to calculation methodology for the CPI, may be accessed on the BLS website at www.bls.gov/opub/hom/pdf/homch17.pdf. According to the Up Trust Registration Statement, the CPI is a complex mathematical construct that combines economic theory with sampling and other statistical techniques and uses data from various consumer surveys to produce a measure of average price changes for the consumption sector of the American economy. The CPI's measurement objectives and the standards according to which the BLS defines any bias in the CPI are derived from the broader framework of a hypothetical cost-of-living index. The goal of any cost-of-living index is to determine the lowest hypothetical expenditure level necessary at this month's prices to achieve the same standard of living as that attained during a base reference time period.

¹⁰ The final distribution made on the Up MacroShares on the final scheduled termination date, an early termination date or a redemption date will be based upon the underlying value of the Up Trust: (1) in the case of the final scheduled termination date, on that final scheduled termination date; (2) in the case of an early termination date, on that early termination date; and (3) in the case of a redemption date, on the related redemption order date. Underlying value will be calculated for each business day at the beginning of that business day and will be based upon the Applicable Reference Value on the preceding day, regardless of whether that preceding day is a business day or a non-business day. The underlying value on each determination date represents the aggregate amount of the assets in the paired trusts to which the Up Trust would be entitled if the settlement contracts were settled on that date. The underlying value of the Up Trust on each determination date also represents the aggregate final distribution to which holders of the Up MacroShares would be entitled if those shares were redeemed on that date. The underlying value is calculated for each business day as follows:

the sum of the Up earned income accruals for each day that has elapsed during the current calculation period up to and including the current business day

plus

the UP investment amount on that date multiplied by the leveraged settlement factor (as defined in the Registration Statement), calculated for the day preceding the current business day.

Reference Value, following the monthly publication by the BLS, any corrections to the CPI-U values released for any calendar month will not be taken into consideration or used to recalculate the underlying value of the Shares.

c. The CPI and the “Medical Care” Major Group

According to the Up Trust Registration Statement, the BLS divides the CPI basket of consumer goods and services into a hierarchy of categories and a number of sub-categories. The first category is the category of the eight “Major Groups,” each of which is divided into sub-groups. “Medical Care” is one of the Major Groups. The Major Group of “Medical Care” represents, as of December 2006 (2003-2004 Weights) 6.23% of the total consumer items which are covered by the CPI-U. The CPI-U “medical care aggregate index” covers two sub-groups: (1) “Medical Care Commodities,” consisting of the expenditure categories of “Prescription Drugs” and “Over-the-Counter Drugs and Medical Supplies,” which are together responsible, as of December 2006 (2003-2004 Weights), for approximately 23.021% of the CPI-U medical care aggregate index; and (2) “Medical Care Services,” consisting of three expenditure categories: “Professional Services,” “Hospital Services,” and “Health Insurance,” which collectively, as of December 2006 (2003-2004 Weights), represent approximately 76.962% of the CPI-U medical care aggregate index.

The movement of the CPI medical care index is based on the average change in the prices of the sample set of entry level items selected to compose such index (e.g., a prescription for a specific medicine or a visit of a specified duration to a doctor or a hospital). The “outlets” providing medical care, such as pharmacies, doctors’ offices and hospitals, and the medical items which will be sampled in each such outlet are chosen by means of the commodities and services sampling procedure described in the Up Trust Registration Statement. The CPI data collectors

select the sample items in each entry-level category by surveying respondents who purchased medical commodities and/or services in the chosen outlets. The CPI defines the transaction price for medical care items as all payments received or expected to be received from eligible payers, including both patients and insurers.

With respect to the Up Trust, if the ratio of the Applicable Reference Value on any day to the Applicable Reference Value on the closing date (the date on which the Trusts entered into an income distribution agreement) exceeds the hurdle rate (“Hurdle Rate”),¹¹ compounded on an annualized basis for the period from the closing date to the day of measurement,¹² the underlying value of the Up Trust on the next business day will include all of its assets plus a portion of the assets of the paired Down Trust. This portion of assets due from the Down Trust

¹¹ The hurdle rate has been designated as 4.50%. This rate is fixed during the term of the Trusts. The Up Trust Registration Statement provides a description for calculating a hypothetical “per share underlying value” for any date, which is the amount an investor would be entitled to receive as a final distribution on that date if the paired trusts were to settle the settlement contracts and the Up Trust were to make a final distribution on Up MacroShares. Because such a final distribution is hypothetical, the Up Trust Registration Statement refers to it solely for the purpose of explaining the meaning of underlying value and the terms of the income distribution agreement and the settlement contracts. The formula used to calculate underlying value is designed to compensate holders of the Up MacroShares for a rate of increase in the value of the medical care component of the Consumer Price Index that is above the designated “hurdle rate,” compounded for the period from the closing date to the relevant date of measurement. However, according to the Up Trust Registration Statement, the amount of this compensation is not designed to equal, in absolute terms or in any specified proportion, the increase in the price of medical goods and services and an investment in the shares will not offset such price increases but will provide only some measure of protection against them. The amount of that protection depends upon certain structural features of the transaction as well as the methodology for calculating the medical component of the CPI-U, as described in the Up Trust Registration Statement.

¹² Telephone Conversation between Michael Cavalier, Associate General Counsel, NYSE Euronext and Ronesha A. Butler, Special Counsel, Division of Trading and Markets, Commission dated June 25, 2008. Compounded Hurdle Rate is defined in the Registration Statement. See supra note 4.

will be multiplied by the leverage factor (“Leverage Factor”).¹³ Conversely, if this ratio is less than the compounded hurdle rate, the Up Trust's underlying value will decrease, because a portion of its assets will be included in the underlying value of its paired Down Trust. This portion of assets due to the Down Trust will be doubled by the Leverage Factor.

With respect to the Down Trust, if the ratio of the Applicable Reference Value on any day to the Applicable Reference Value on the closing date (the date on which the Trusts entered into an income distribution agreement) exceeds the Hurdle Rate, compounded for the period from the closing date to the day of measurement, the underlying value of the Down Trust on the next business day will decrease, because a portion of its assets will be included in the underlying value of its paired Up Trust. This portion of assets due to the Up Trust will be multiplied by the Leverage Factor. Conversely, if this ratio is less than the compounded Hurdle Rate, the Down Trust's underlying value will increase, because a portion of the assets of the Up Trust will be included in the underlying value of the Down Trust. This portion of assets due from the Up Trust will be doubled by the Leverage Factor.

The Up MacroShares may be issued only in MacroShares Units consisting of a minimum of 50,000 Up MacroShares issued by the Up Trust and 50,000 Down MacroShares issued by the Down Trust. The Up Trust and Down Trust will issue their shares in the minimum amounts that

¹³ The leverage factor is 2 and will be fixed for the term of the Trusts. According to the Up Trust Registration Statement, the impact of changes in the Applicable Reference Value is multiplied by the leverage factor. The medical inflation ratio of the Applicable Reference Value on a certain day to the Applicable Reference Value on the closing day, divided by the compounded hurdle rate, will yield a settlement factor by which the assets held on deposit by the Up Trust must be multiplied in order to determine the Trust's underlying value. Before being so applied, this settlement factor is first adjusted by a leverage factor, (*i.e.*, 2). The effect of this is to double any increase in the underlying value of the Up Trust as well as to double any decline in that underlying value, making the per-share underlying value and the market price of an investor's Up MacroShares potentially more volatile than the value of medical inflation which those shares reference.

constitute a MacroShares Unit on an ongoing basis only to persons who qualify as authorized participants at the per-share underlying value of those shares on the business day on which a creation order for the shares is delivered to and accepted by MacroMarkets LLC, the administrative agent.¹⁴ The Shares may then be sold by authorized participants to the public at the market price prevailing at the time of any such sale.

The Up MacroShares must be redeemed together with Down MacroShares by any holder who is an authorized participant on any business day in MacroShares Units consisting of a minimum of 50,000 Up MacroShares and 50,000 Down MacroShares, at the respective per share underlying values of those shares, as measured on the applicable redemption date. Unless earlier redeemed on a redemption date or an early termination date, a final distribution will be made on the Up MacroShares on the distribution date occurring in 2018.

The Up Trust Registration Statement includes a number of hypothetical scenarios of circumstances that will impact the underlying value of an Up MacroShare and a Down MacroShare. More information regarding the Shares, the Up Trust and the Applicable Reference Value, Income Distribution, Redemption Final Distribution, Risks, Fees and Expenses, Termination Triggers, and Creation and Redemption Procedures can be found in the Up Trust Registration Statement.¹⁵

d. Availability of Information

At the beginning of each business day, not later than one hour prior to the commencement of trading in the Core Trading Session on the Exchange, State Street Bank and Trust Company, the trustee for the Up Trust and the Down Trust, will calculate the underlying

¹⁴ Authorized participants must also pay a transaction fee of \$2,000 for any paired redemption or issuance and, for any paired issuance directed prior to July 1, 2008, a fee equal to 3.00% of the aggregate par amount of paired shares being created.

value of the Up Trust and the Down Trust and the per share underlying value of one Up MacroShare and one Down MacroShare. The trustee will then provide such values to the administrative agent, who will post them on its Web site located at www.macromarkets.com. The trustee will base its calculation of underlying value for any business day on the administrative agent's calculation of the Applicable Reference Value for the preceding day (regardless of whether that preceding day is a business day or non-business day),¹⁶ which it will provide to the trustee. The underlying value will be disseminated to all market participants at the same time.

An intraday indicative value will not be disseminated for the Trusts. The Reference Price (in the case of the Up Macroshares and Down Macroshares, the Applicable Reference Value) is a daily linear interpolation based on the monthly values of the medical care component of the CPI-U for the preceding two months. The Exchange believes that the Reference Price applicable to the Trusts, considered together with the current market price of Shares, will provide investors with sufficient information to approximate the amount to be received upon redemption of Shares.

Information regarding the market price and volume of the Shares 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. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association high-speed line.

¹⁵ See supra note 4.

e. Initial and Continued Listing Criteria

NYSE Arca Equities Rule 8.400(d) sets forth initial and continued listing criteria applicable to Paired Trust Shares. A minimum of 100,000 Up MacroShares and 100,000 Down MacroShares will be required to be outstanding at the commencement of trading. In addition, the Exchange will obtain a representation on behalf of the Up Trust and the Down Trust that the underlying value per share of each Up Share and Down Share, respectively, will be calculated daily and will be made available to all market participants at the same time. The Exchange will remove from listing the Up MacroShares or the Down MacroShares under the circumstances outlined in the proposed amendments to NYSE Arca Equities Rule 8.400(d) for Trading Shares, which include:

- if, after the initial twelve-month period following the commencement of trading of the Shares, (A) the Up Trust or the Down Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Up MacroShares or Down MacroShares, respectively, for 30 or more consecutive trading days; (B) if the Up Trust or the Down Trust has fewer than 50,000 Up MacroShares or Down MacroShares, respectively, issued and outstanding; or (C) if the combined market value of all Shares issued and outstanding for the Up Trust and the Down Trust combined is less than \$1,000,000;
- if a replacement benchmark is selected for the determination of the Applicable Reference Value, unless the Exchange files with the Commission a related

¹⁶ The daily value of the Applicable Reference Value on the preceding day will be based upon the value of the medical component of the CPI-U that was calculated and published by the BLS for the second and third preceding calendar months.

proposed rule change pursuant to Rule 19b-4 under the Act¹⁷ seeking approval to continue trading the Up MacroShares or Down MacroShares and such rule change is approved by the Commission; or

- if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

NYSE Arca Equities Rule 8.400(d)(2) also provides that the Exchange will halt trading in the Up MacroShares or the Down MacroShares, as the case may be, if the circuit breaker parameters of NYSE Arca Equities Rule 7.12 have been reached. In exercising its discretion to halt or suspend trading in the Up MacroShares or the Down MacroShares, the Exchange may consider other factors that may be relevant.

f. Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. NYSE Arca Equities Rule 8.400(d)(2) described above sets forth circumstances under which Shares may be halted.

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.

¹⁷ 17 CFR 240.19b-4.

g. Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

h. Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative securities products, including Paired Trust Shares, to monitor trading in the Shares. The Exchange represents that these 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.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.¹⁸ In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

i. Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading

¹⁸ For a list of the current members of ISG, see www.isgportal.org.

the Shares. Specifically, the Bulletin will discuss the following: (1) what the Shares are; (2) the procedures for purchases and redemptions of Shares in MacroShares Units (and that Shares are not individually redeemable); (3) NYSE Arca Equities Rule 9.2(a),¹⁹ which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information.

In addition, the Bulletin will reference that the Shares are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)²⁰ that a national securities exchange have rules that are 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 facilitating transactions in securities, 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 Exchange

¹⁹ NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, 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 rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that the ETP Holder believes would be useful to make a recommendation. See Securities Exchange Act Release No. 54026 (June 21, 2006), 71 FR 36850 (June 28, 2006) (SR-PCX-2005-115).

²⁰ 15 U.S.C. 78f(b)(5).

believes that the proposed rule amendments will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in the proposed rules are intended to protect investors and the public interest.

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. 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. 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-NYSEArca-2008-63 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2008-63. 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, 100 F Street, NE, Washington, DC 20549, 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 office 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-NYSEArca-2008-63 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Florence E. Harmon
Acting Secretary

²¹ 17 CFR 200.30-3(a)(12).