

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58058; File No. SR-NYSEArca-2008-65)

June 30, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Trade Shares of the MacroShares Oil Trusts Pursuant to Unlisted Trading Privileges

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 19, 2008, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities” or the “Corporation”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves the proposal on an accelerated basis.

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

The Exchange proposes to trade pursuant to unlisted trading privileges (“UTP”) under NYSE Arca Equities Rule 8.400 (“Paired Trust Shares”) shares of the MacroShares \$100 Oil Up Trust (“Up Trust”) and the MacroShares \$100 Oil Down Trust (“Down Trust”) (collectively, the “Trusts”). The text of the proposed rule change is available at the Exchange’s principal office, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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.

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

1. Purpose

The Exchange proposes to trade pursuant to UTP shares of the Up Trust (“Up MacroShares”) and the Down Trust (“Down MacroShares”) (collectively, the “Shares”) under NYSE Arca Equities Rule 8.400.<sup>3</sup> The Up MacroShares and the Down 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.<sup>4</sup> Recently, the Commission approved a proposal by Amex to list and trade the Shares.<sup>5</sup>

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<sup>3</sup> The Commission approved trading a similar product on the Exchange pursuant to unlisted trading privileges (“UTP”) when it approved 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 UTP trading of Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares). The Commission also approved those products for listing and trading on the American Stock Exchange LLC (“Amex”). See Securities Exchange Act Release No. 54839 (November 29, 2006), 71 FR 70804 (December 6, 2006) (SR-Amex-2006-82).

<sup>4</sup> The Shares are being offered by the Trusts under the Securities Act of 1933. 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”).

<sup>5</sup> See Securities Exchange Act Release No. 58057 (June 30, 2008). See also Securities Exchange Act Release No. 57925 (June 5, 2008), 73 FR 33121 (SR-Amex-2008-36) (“Amex Notice”).

(a) Description of the Fund and the Trust

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 the Amex Notice. The Up MacroShares and the Down MacroShares represent undivided beneficial interests in the Up Trust and the Down Trust, respectively. The assets of each Trust will include an income distribution agreement and settlement contracts entered into with the other Trust. Under the income distribution agreement, as of any distribution date, each Trust will either (a) be required to pay all or a portion of its available income to the other Trust or (b) be entitled to receive all or a portion of the other Trust's available income, based, in each case, on the level of the Applicable Reference Price of Crude Oil (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 (a) be required to make a final payment out of its assets to the other Trust or (b) 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 change in the level of the Applicable Reference Price of Crude Oil from its starting level on the closing date to its ending level on the relevant price determination day preceding the final scheduled termination date, early termination date, or redemption date, as the case may be.

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.<sup>4</sup> Each quarterly and final distribution will be based on the value of the Applicable Reference Price of Crude Oil, which is defined as the settlement price of the

NYMEX division light sweet crude oil futures contract of the designated maturity, as established and reported by NYMEX on a per-barrel basis in U.S. dollars at the end of each price determination day. For this purpose, a price determination day refers to 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 NYMEX.<sup>6</sup> The Applicable Reference Price of Crude Oil is the reference value on the basis of which quarterly and final distributions on the Up MacroShares and Down MacroShares are calculated.

With respect to the Up Trust, if the level of the Applicable Reference Price of Crude Oil on any price determination day exceeds its starting level on the closing date (the date on which the Trusts entered into the income distribution agreement), the underlying value of the Up Trust will increase to include all of its assets plus a portion of the assets of the paired Down Trust. Conversely, if the level of the Applicable Reference Price of Crude Oil on any price determination day falls below its starting level, the Up Trust's underlying value will decrease because a portion of its assets will be included in the underlying value of the paired Down Trust. The underlying value of the Up Trust on each price determination day 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 day.

With respect to the Down Trust, if the level of the Applicable Reference Price of Crude Oil on any price determination day exceeds its starting level on the closing date, the underlying value of the Down Trust will decrease because a portion of its assets will be included in the underlying value of the paired Up Trust. Conversely, if the level of the Applicable Reference Price of Crude Oil on any price determination day falls below its starting level, the Down Trust's

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<sup>6</sup> If trading of the NYMEX division's light sweet crude oil futures contract ceases to occur by open outcry and is transferred by NYMEX to an electronic platform, a price determination day will be based upon trading on such electronic platform.

underlying value will increase to include all of its assets plus a portion of the assets of the paired Up Trust. The underlying value of the Down Trust on each price determination day represents the aggregate amount of the assets in the paired Trusts to which the Down Trust would be entitled if the settlement contracts were settled on that day.

The Registration Statements for the Trusts will provide a detailed description of 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.

(b) Availability of Information

Intraday Indicative Values. According to the Amex Notice, throughout each price determination day, Amex, acting as the calculation agent for each Trust, will calculate and disseminate, at least every 15 seconds during regular Amex trading hours, through the facilities of the Consolidated Tape Association (“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. To enable this calculation, Amex 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 Amex trading day, the IIV calculated values will become fixed and will not be updated at such times that the NYMEX contract is not trading.<sup>7</sup> Conversely, at times when the

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<sup>7</sup> The IIV calculated during the period following the daily opening of trading of the Shares on Amex 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.

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. According to the Amex Notice, at the end of each price determination day, Amex will also calculate the premium or discount of the midpoint of the bid/offer for the Up MacroShares at the Amex close relative to the underlying value of one of those Shares for that price determination day, after the latter is calculated and provided to Amex by the trustee. Amex will also perform the same calculation with respect to the Down MacroShares. Amex will then post these premiums/discounts, together with the end-of-day price information for the Shares, on its Web site at <http://www.amex.com/amextrader>. Further, Amex will post on its Web site any corrections made by NYMEX to the Applicable Reference Price of Crude Oil that was reported by NYMEX for any price determination day. Amex 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, including quotation and last-sale data information.

On each price determination day, State Street Bank and Trust Company, the trustee for the Up Trust and the Down Trust, will calculate the underlying value of the Up Trust and the Down Trust and the per-Share underlying value of the Up MacroShares and the Down MacroShares, based on the Applicable Reference Price of Crude Oil established and reported by NYMEX. The trustee will then provide such values to the administrative agent, which will post them on its Web site at <http://www.macromarkets.com>. All investors and market participants will have access to the administrative agent's 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.

(c) Trading Halts

The Exchange represents that it will cease trading the Shares if the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12. Trading in the Shares will also be governed by the trading halt provisions of NYSE Arca Equities Rule 7.34, relating to temporary interruptions in the calculation or wide dissemination of the IIV or the value of the underlying index, as applicable.

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) sets forth circumstances under which Shares may be halted.

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

(d) 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 4:00 a.m. to 8:00 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.

(e) 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 or 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.<sup>8</sup>

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

(f) 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 the Shares, including risks inherent with trading the Shares during the Opening and Late Trading Sessions when the updated IIV is not calculated and disseminated. 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), which provides that an ETP Holder, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the

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<sup>8</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs;<sup>9</sup> (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; (5) how information regarding the IIV is disseminated; and (6) trading information.

In addition, the Bulletin will reference that the Shares are subject to various fees and expenses described in the Registration Statements. 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 proposed rule change is consistent with Section 6(b)(5) of the Act<sup>10</sup> which requires that the rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate unlisted trading of an additional type of exchange-traded product 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 Rule 8.400 are intended to protect investors and the public interest.

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<sup>9</sup> 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).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

In addition, the proposed rule change is consistent with Rule 12f-5 under the Act<sup>11</sup> because it deems the Shares to be equity securities, thus rendering the 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number NYSEArca-2008-65 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 NYSEArca-2008-65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>11</sup> 17 CFR 240.12f-5.

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 No. NYSEArca-2008-65 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 Proposed Rule Change

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.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>13</sup> 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 facilitating transactions in securities, to remove

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<sup>12</sup> 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).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

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 believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that proposal is consistent with Section 12(f) of the Act,<sup>14</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>15</sup> The Commission notes that it approved the original listing and trading of the Shares on Amex.<sup>16</sup> The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,<sup>17</sup> 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. The Exchange has represented that it meets this requirement because it 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.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>18</sup> which sets forth Congress's 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

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<sup>14</sup> 15 U.S.C. 78l(f).

<sup>15</sup> 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.

<sup>16</sup> See supra note 5.

<sup>17</sup> 17 CFR 240.12f-5.

<sup>18</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

for and transactions in securities. Quotations for and last-sale information regarding the Shares will be disseminated through the facilities of the CTA and Consolidated Quote High Speed Lines. Amex will disseminate through the facilities of the CTA an IIV on a per-share basis at least every 15 seconds during regular trading hours. Amex will post the premium or discount of the midpoint of the bid/offer, together with the end-of-day price information, for the Shares on its Web site. In addition, the per-Share underlying value for the Shares on each price determination day will be publicly disseminated.

The Commission also believes that the proposal is reasonably designed to prevent trading in the Shares when transparency is impaired. The Exchange represents that it will halt trading in the Shares if the listing market institutes a regulatory halt in trading in the Shares. The Exchange also has represented that it would follow the procedures with respect to trading halts set forth in NYSE Arca Equities Rule 7.34, which provides, inter alia, for trading halts in certain circumstances when the IIV is not being disseminated as anticipated. In addition, if the Exchange becomes aware that the underlying value per-Share of the Up MacroShares or the Down MacroShares is not disseminated to all market participants at the same time, it would halt trading in the relevant Shares until such time as the underlying value per-Share is available to all market participants.

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

In support of the proposed rule change, the Exchange has made the following representations:

1. 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 or applicable federal securities laws.

2. The Exchange will inform its ETP Holders in a Bulletin of the special characteristics and risks associated with trading the Shares, including risks inherent with trading the Shares during the Opening and Late Trading Sessions when the updated IIV is not calculated and disseminated.

3. The Bulletin will reference the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction.

This approval order is based on these representations.

The Commission finds good cause for approving this proposed rule change prior to the thirtieth day after the publication of notice thereof in the Federal Register. As noted above, the Commission previously found that the listing and trading of these Shares on Amex is consistent with the Act.<sup>19</sup> The Commission presently is not aware of any issue that would cause it to revisit that finding or preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

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<sup>19</sup> See supra note 5.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSEArca-2008-65), is hereby approved on an accelerated basis.<sup>20</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

Florence E. Harmon  
Acting Secretary

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<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 17 CFR 200.30-3(a)(12).