

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58873; File No. SR-NYSEArca-2008-110)

October 28, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Listing Shares of the MacroShares \$100 Oil Up Trust and the MacroShares \$100 Oil Down Trust

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on October 15, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

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

Pursuant to the provisions of Section 19(b)(1) of the Act,³ NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), proposes to list and trade 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”, and, together with the Up Trust, the “Trusts”). The shares of the Up Trust are referred to as the Up MacroShares, and the shares of the Down Trust are referred to as the Down MacroShares (collectively, the “Shares”). The text of the proposed rule change is available on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

the Exchange's Web site at www.nyse.com, at the Exchange's principal office and at the Public Reference Room of the Commission.

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 self-regulatory organization 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 parts 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 list and trade under NYSE Arca Equities Rule 8.400 ("Paired Trust Shares") the Up MacroShares (symbol: UOY) and the Down MacroShares (symbol: DOY).⁴ 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

⁴ The Commission approved trading a similar product on the Exchange pursuant to unlisted trading privileges 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 such product for listing and trading on the American Stock Exchange LLC. See Securities Exchange Act Release No. 54839 (November 29, 2006), 71 FR 70804 (December 6, 2006) (SR-Amex-2006-82) (approving listing and trading Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares).

investment companies.⁵ The Trusts are currently listed on NYSE Alternext US LLC (NYSE Alternext US (formerly, the American Stock Exchange LLC (“Amex”)) and are traded on the Exchange pursuant to unlisted trading privileges (“UTP”).⁶ Prior to listing on the Exchange, the Trusts would be required to satisfy the applicable delisting procedures of NYSE Alternext US and applicable statutory and regulatory requirements, including, without limitation, Section 12 of the Act,⁷ relating to listing the MacroShares Units on the Exchange.⁸

The Exchange represents that the Shares satisfy the requirements of Rule 8.400 and thereby qualify for listing on the Exchange. Descriptions of the Shares and of the Trusts are included in the Amex Order. The Shares are Trading Shares as defined in Rule 8.400(b)(1)(B).

The Trusts have represented to the Exchange that they are relying on the exemption provided for passive trusts under Rule 10A-3(c)(7)⁹ under the Act with respect to establishment of an independent audit committee.

⁵ The Shares are being offered by the Trusts under the Securities Act of 1933, as amended. On April 17, 2008, the depositor filed with the Commission a Registration Statement on Form S-1 for both the Up MacroShares (File No. 333-150282-01) (“Up Trust Registration Statement”) and the Down MacroShares (File No. 333-150282-02) (“Down Trust Registration Statement”) and together with the Up Trust Registration Statement, the “Registration Statements”).

⁶ See Securities Exchange Act Release No. 58057 (June 30, 2008), 73 FR 38474 (July 7, 2008) (SR-Amex-2008-36) (order approving listing of the Trusts on the Amex) (“Amex Order”); Securities Exchange Act Release No. 58058 (June 30, 2008), 73 FR 38484 (July 7, 2008) (SR-NYSEArca-2008-65) (order approving trading of the Trusts on the Exchange pursuant to UTP) (“NYSE Arca Order”).

⁷ 15 U.S.C. 78(l).

⁸ See e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated October 16, 2008. The Exchange will seek the voluntary consent of the issuer of the MacroShares Units to be delisted from NYSE Alternext US and listed on the Exchange. The Exchange notes that its approval of the Trusts’ listing applications would be required prior to listing.

⁹ 17 CFR 240.10A-3(c)(7).

More information regarding the Shares, the Trusts, the Applicable Reference Price of Crude Oil, quarterly distributions, final distributions, underlying values, risks, fees and expenses, termination triggers, and creation and redemption procedures can be found in the Registration Statements and the Amex Order.¹⁰

Availability of Information

Intraday Indicative Values. Throughout each price determination day, NYSE Alternext US, acting as the calculation agent for each Trust, will calculate and disseminate, at least every 15 seconds during the Exchange's Core Trading Session, 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. The purpose of this disclosure is to promote liquidity and intraday pricing transparency with respect to these estimated per-Share underlying values, which can be used in connection with other related market information. To enable this calculation, the NYSE Alternext US will receive real time price data from the NYMEX through two major market data vendors for the light sweet crude oil futures contract of the designated maturity that trades on the NYMEX.

Because the NYMEX market for the light sweet crude oil futures contract will be closed for portions of the Core Trading Session, the IIV calculated values will become fixed and will not be updated at such times that the NYMEX contract is not trading.¹¹ Conversely, at times

¹⁰ Terms relating to the Trusts referred to, but not defined, herein are defined in the Registration Statements.

¹¹ The IIV calculated during the period following the daily opening of trading of the shares on the Exchange 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.

when the light sweet crude oil futures contract of the designated maturity is trading on NYMEX, those trades will be used to update the IIV values.

Availability of Other Information and Data. At the end of each price determination day, NYSE Alternext US will also calculate the premium or discount of the midpoint of the bid/offer for the Up MacroShares at the close on the Exchange relative to the underlying value of one of those Shares for that price determination day. NYSE Alternext US will also perform the same calculation with respect to the Down MacroShares. MacroMarkets LLC (“MacroMarkets”) will then post these premiums/discounts, together with the end-of-day price information for the Shares, on its Web site at www.macromarkets.com and the Exchange will maintain a hyperlink on its Web site, www.nyse.com, to the MacroMarkets Web site. Further, MacroMarkets will post on its Web site the Applicable Reference Price of Crude Oil that was reported by NYMEX for any price determination day. The Exchange also will 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.¹²

On each price determination day, State Street Bank and Trust Company, the trustee for the Trusts, will calculate the underlying value of the Up Trust and the Down Trust and the per-Share underlying value of one Up MacroShare and one Down MacroShare, based on the Applicable Reference Price of Crude Oil established and reported by NYMEX. The trustee will then provide such values to MacroMarkets, which will post them on its Web site, and information posted on such Web site will be made available to all market participants at the same time. All investors and market participants will have access to MacroMarkets’ Web site at no charge. Information regarding secondary market prices and volume of the Shares will be broadly

¹² See e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated October 21, 2008.

available on a real-time basis throughout the trading day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers.

Trading Halts

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

Trading Rules

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.

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.¹³

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

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 imposes a duty of due diligence on its ETP Holders to learn the

¹³ For a list of the current members of the ISG, see www.isgportal.org.

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; (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 basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹⁴ that an exchange have rules that 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 allow the listing of the Trusts on the Exchange, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 8.400 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

No written comments were solicited or received with respect to the proposed rule change.

¹⁴ 15 U.S.C. 78f(b)(5).

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. Please include File Number SR-NYSEArca-2008-110 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-2008-110. 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 the 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-2008-110 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 consideration, 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.¹⁵ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,¹⁶ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission notes that it recently approved the listing and trading of the Shares on Amex,¹⁷ now known as NYSE Alternext US, and the trading of the Shares pursuant to UTP on the Exchange.¹⁸

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.400. NYSE Arca represents that the Shares will conform to the existing initial and continued listing criteria under such rule.

¹⁵ 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).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ See Amex Order, supra, note 6.

¹⁸ See NYSE Arca Order, supra, note 6.

The Commission believes that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹⁹ 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. The Exchange will 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. Throughout each price determination day, NYSE Alternext US will calculate and disseminate at least every 15 seconds during the Exchange's Core Trading Session, through the facilities of the CTA, an IIV for the underlying value per Share of both the Up MacroShares and the Down MacroShares.²⁰

On each price determination day, the trustee will calculate the underlying values of the Up Trust and the Down Trust, along with the per-Share underlying value of one Up MacroShare and one Down MacroShare, based on the Applicable Reference Price of Crude Oil established and reported by NYMEX. The trustee then will provide such values to MacroMarkets, which will post them on its Web site, and the information posted on such Web site will be made available to all market participants at the same time. All investors and market participants will have access to MacroMarkets' Web site at no charge.

In addition, at the end of each price determination day, NYSE Alternext US will calculate the premium or discount of the midpoint of the bid/offer for the Up MacroShares at the close on the Exchange relative to the underlying value of one of those Shares for that price determination day. NYSE Alternext US also will perform the same calculation with respect to the Down MacroShares. MacroMarkets will then post these premiums/discounts, together with the end-of-

¹⁹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

²⁰ See supra note 11 and accompanying text.

day price information for the Shares, on its Web site (www.macromarkets.com) and the Exchange will maintain a hyperlink on its Web site. Additionally, MacroMarkets will post on its Web site the Applicable Reference Price of Crude Oil that was reported by NYMEX for any price determination day.

Lastly, the Exchange states that 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.

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that NYSE Arca Equities Rule 8.400(d)(1)(ii) requires that the Exchange obtain a representation on behalf of the Trusts, prior to listing, that the underlying value per Share of each Up Trust and the Down Trust will be calculated daily and will be made available to all market participants at the same time. Moreover, NYSE Arca Equities Rule 8.400(d)(2)(ii) requires that the Exchange remove the Shares from listing if the intraday value of the Reference Price²¹ is no longer calculated or available on at least a 15-second delayed basis during the time the Shares trade on the Exchange. Additionally, NYSE Arca Equities Rule 8.400(d)(2)(iii) requires the Exchange to remove the Shares from listing if the IIV is no longer made available as required. With respect to trading halts, NYSE Arca Equities Rule 8.400(d)(2) provides that, if the intraday value of the Reference Price or the IIV is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the

²¹ See NYSE Arca Equities Rule 8.400(c). In the case of the Shares, the Reference Price is the Applicable Reference Price of Crude Oil.

applicable value occurs; if such interruption persists past the trading day in which it occurred, the Exchange is required to halt trading no later than the beginning of the trading following the interruption. The Exchange further represents that, if the Exchange becomes aware that the underlying value per Share of each Up Trust and Down Trust 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. Further, 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 make trading in the Shares inadvisable, including: (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.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Shares are equity securities subject to NYSE Arca's rules governing the trading of equity securities.

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

- (1) The Shares satisfy the requirements of NYSE Arca Equities Rule 8.400, which includes the initial and continued listing criteria for Paired Trust Shares.

- (2) The Exchange's surveillance procedures are adequate to properly monitor trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules or applicable federal securities laws.
- (3) The Exchange will distribute an Information Bulletin, the contents of which are more fully described above, to ETP Holders in connection with the trading of the Shares.

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

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²² for approving the proposed rule change prior to the 30th day after the date of publication of notice in the Federal Register. The Commission notes that it has previously approved the listing and trading of the Shares on Amex²³ and believes that the Exchange's proposal to list and trade such Shares does not appear to present any novel or significant regulatory issues that should cause it to revisit that previous finding. As such, the Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for such products.

²² 15 U.S.C. 78s(b)(2).

²³ See Amex Order, supra, note 6. The Shares have also been approved for trading on the Exchange pursuant to UTP. See NYSE Arca Order, supra, note 6.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (SR-NYSEArca-2008-110) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Florence E. Harmon
Acting Secretary

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).