

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58312; File No. SR-NYSEArca-2008-63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of the MacroShares Medical Inflation Trusts

August 5, 2008.

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"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to: (1) Amend NYSE Arca Equities Rule 8.400 (Paired Trust Shares); and (2) list and trade shares of the MacroShares Medical Inflation Up Trust Series 2008-1 ("Up Trust") and shares of the MacroShares Medical Inflation Down Trust Series 2008-1 ("Down Trust" and, together with the Up Trust, the "Trusts").³ The proposed rule change was published for comment in the **Federal Register** on July 2, 2008.⁴ The Commission received no comments on the proposal. On July 31, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of filing of Amendment No. 1 to the proposed rule change,⁵ and grants accelerated

approval to the proposed rule change, as modified by Amendment No. 1.

I. Description of the Proposal

A. Amendments to NYSE Arca Equities Rule 8.400

The Exchange proposes to amend NYSE Arca Equities Rule 8.400 governing Paired Trust Shares to allow for the listing and trading of "Trading Shares," a proposed new type of Paired Trust Share. Currently, NYSE Arca Equities Rule 8.400 defines Paired Trust Shares to include only Holding Shares, which are issued by a matched pair of Trusts ("Holding Trusts") in exchange for cash, and Tradeable Shares, which are issued by a different pair of Trusts ("Tradeable Trusts") in exchange for the deposit of Holding Shares.

Under the proposed amendments to NYSE Arca Equities Rule 8.400, the term "Paired Trust Shares" refers to: (1) Both Holding Shares and any related Tradeable Shares; or (2) solely "Trading Shares," which is a new defined term. As proposed, Trading Shares has the same definition as Holding Shares, 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. The Exchange represents that there are no substantive differences between the proposed Paired Trust Shares structure (*i.e.*, a single set of Trading Trusts that issue Trading Shares and hold financial instruments) and the current two-tier structure (*i.e.*, 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).

B. Listing and Trading of the Shares

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. 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 consist of 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: (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.⁶ The medical care component of the CPI-U reflects inflation in the cost of 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. For purposes of determining the Applicable 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.

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

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The shares of the Up Trust are referred to as Up MacroShares, the shares of the Down Trust are referred to as Down MacroShares, and the Up MacroShares and Down MacroShares are referred to collectively as the "Shares."

⁴ See Securities Exchange Act Release No. 58024 (June 25, 2008), 73 FR 38003.

⁵ Amendment No. 1 provided additional detail regarding the availability of the Applicable Reference Value (as defined herein) and other information relating to the Shares. The amendment also clarifies proposed NYSE Arca Equities Rule 8.400(d)(2)(ii), which describes a circumstance in which Paired Trust Shares will be delisted. Specifically, the amendment makes clear that the Exchange will delist any type of Paired Trust Shares (not just Tradeable Shares) for which an intraday

Reference Price is calculated and disseminated if the intraday Reference Price is not calculated or disseminated as required by the Rule.

⁶ 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 chapter is dedicated to calculation methodology for the CPI, may be accessed on the BLS Web site at www.bls.gov/opub/hom/pdf/homch17.pdf.

distribution agreement) exceeds the hurdle rate ("Hurdle Rate"),⁷ compounded on an annualized basis for the period from the closing date to the day of measurement, 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 will be multiplied by the leverage factor ("Leverage Factor").⁸ 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 multiplied 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 multiplied 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 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

⁷ 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.

⁸ The leverage factor is 2, and is fixed for the term of the Trusts.

MacroMarkets LLC, the administrative agent.⁹ The Shares may then be sold by authorized participants to the public at the market price prevailing at the time of any such sale.

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.

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 and Down Trust Registration Statement.¹⁰

1. 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 values of the Up Trust and the Down Trust and the per Share underlying values of the Up MacroShares and Down MacroShares. The trustee will then provide such values to the administrative agent, who will post them on its Web site located at www.macromarkets.com. Intraday indicative values for the Shares will not be calculated. The trustee will base its calculation of underlying value for any business day on the administrative agent's calculation of the Applicable Reference Value¹¹ for the preceding day (regardless of whether that preceding day is a business day or non-business

⁹ 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.

¹⁰ The Exchange states that the income distribution agreement and applicable settlement contracts will be attached as Exhibits to the Registration Statements. 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). The Exchange states that the depositor will file with the Commission a Registration Statement on Form S-1 for the Down MacroShares prior to commencement of trading in the Shares on the Exchange.

¹¹ The Applicable Reference Value (the Reference Price for the Shares) 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 it will not be re-calculated or disseminated intraday.

day),¹² which it will provide to the trustee. The underlying values will be disseminated to all market participants at the same time.

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.

2. 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 values per Share of the Up Shares and Down Shares 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 proposed rule change pursuant to Rule 19b-4 under the Act¹³ seeking

¹² 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.

¹³ 17 CFR 240.19b-4.

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.

3. 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) 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.

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.

4. 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 represents that it has appropriate rules to facilitate transactions in the Shares during all trading sessions.

5. 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.¹⁴ In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

6. 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. 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),¹⁵ 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.

¹⁴ For a list of the current members of ISG, see www.isgportal.org.

¹⁵ 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).

II. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act¹⁶ and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁸ which requires, among other things, that the Exchange's rules 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.

A. Amendments to NYSE Arca Equities Rule 8.400

NYSE Arca Equities Rule 8.400 governs the listing and trading of Paired Trust Shares. The definition of Paired Trust Shares is currently limited to Holding Shares and Tradeable Shares.¹⁹ The Exchange proposes to broaden the definition of Paired Trust Shares to include Trading Shares. The structure of Trading Shares differs from the structures described under the current NYSE Arca Equities Rules governing Paired Trust Shares in that, for Trading Shares, there are no Holding Trusts and there is only one set of trusts (*i.e.*, the "Up Trust" and the "Down Trust") instead of two. As noted above, the Exchange has represented 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 (in which a set of Tradeable Trusts that issue Tradeable Shares and hold Holding Shares issued by a set of Holding Trusts that issue in financial instruments).

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Trading Shares on the Exchange. Previously, the Commission found that the current rules governing the listing and trading of Paired Trust Shares are consistent with

¹⁶ 15 U.S.C. 78f.

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

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ See current NYSE Arca Equities Rule 8.400(b)(1).

Section 6(b)(5) of the Act.²⁰ Given the substantial similarities between Holding Shares, Tradeable Shares, and Trading Shares, the Commission believes that including Trading Shares within the Exchange's existing regime for listing and trading Paired Trust Shares is appropriate and does not raise any regulatory issues. The Commission notes that it recently approved a proposal by another national securities exchange which also included Trading Shares as part of its rules relating to Paired Trust Shares.²¹

The Commission believes that the proposal should help to facilitate the listing and trading of additional types of exchange-traded products that should enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the Commission believes that the listing and trading criteria for Trading Shares set forth in proposed NYSE Arca Equities Rule 8.400 are reasonably designed to protect investors and the public interest, as discussed herein.

B. Listing and Trading the Shares

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,²² 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. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line. The Exchange states that 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, and that the previous day's closing price and trading volume information for the Shares will be published daily in the financial sections of major newspapers and will be available from major market data vendors. At the end of each business day, the administrative agent (MacroShares Markets LLC) will also calculate the premium or discount of the midpoint of the bid/offer to the underlying value per Share for both the Up MacroShares and the Down MacroShares for that day at the close of

the Exchange's Core Trading Session. The premium/discount calculation will be conducted after such underlying values are calculated and provided to the administrative agent by the trustee and after the Exchange provides the administrative agent with the closing price for the Up MacroShares and Down MacroShares as of 3:59:59 (Eastern Time). The administrative agent will then post these premiums/discounts, together with the end-of-day price information for the Shares, on its Web site (www.macromarkets.com).

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, 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 values of the Up MacroShares and Down MacroShares. The trustee will then provide such values to the administrative agent, who will post them on its Web site, which is accessible to the public free of charge. The Exchange represents that the underlying values of the Trusts will be disseminated to all market participants at the same time.

The administrative agent will also determine daily the Applicable Reference Value, which it will disseminate to all market participants at the same time by posting it on its Web site.

The Commission 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 the Exchange will obtain a representation on behalf of the Trusts that the per-Share net asset values for the Trusts will be calculated daily and made available to all market participants at the same time. Additionally, the Exchange will halt trading in the Shares if it becomes aware that the per-Share values of the Up Trust or the Down Trust are not disseminated daily to all market participants at the same time.

As noted above, neither an indicative value for the Shares nor the Applicable Reference Value (the Reference Price for the Shares, for purposes of NYSE Arca Equities Rule 8.400) will be calculated or disseminated intraday. Instead, the per Share underlying values of the Up MacroShares and Down MacroShares and the Applicable Reference Value will be calculated and disseminated daily. The Commission believes that, because

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, daily dissemination of the Applicable Reference Value and underlying values of the Trusts will be sufficient to provide market participants an approximation of the value of the Shares.

The Exchange has represented that the Shares are equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made the following representations:

(1) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares and to deter and detect violations of Exchange rules and applicable federal securities laws.

(2) Prior to the commencement of trading, the Exchange will inform its members and Member Organizations an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) What the Shares are; (b) the procedures for purchases and redemptions of Shares in MacroShares Units (and that Shares are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), 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; (d) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (e) trading information; (f) that the Shares are subject to various fees and expenses described in the Registration Statements;²³ and (g) any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.²⁴

III. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁵ for approving the proposal, as

²⁰ See Securities Exchange Act Release No. 55033 (December 29, 2006), 72 FR 1253, 1256 (January 10, 2007) (SR-NYSEArca-2006-75).

²¹ See Securities Exchange Act Release No. 58057 (June 30, 2008), 73 FR 38474 (July 7, 2008) (SR-Amex-2008-36).

²² 15 U.S.C. 78k-1(a)(1)(C)(iii).

²³ See *supra* note 10.

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78s(b)(2).

modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing of Amendment No. 1 in the **Federal Register**.²⁶ In Amendment No. 1, NYSE Arca provided additional information concerning the dissemination of information relating to the Shares, and clarified the continued listing requirement with respect to the calculation and dissemination of an intraday Reference Price.²⁷ Accordingly, Amendment No. 1 does not raise any new issues about the proposed rule change, and the Commission finds good cause for approving the NYSE Arca's proposal, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 a.m. and 3 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 September 2, 2008.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-NYSEArca-2008-63), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58292; File No. SR-DTC-2008-07]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Implement Processing Enhancements to the Profile Modification System Used in the Direct Registration System

August 1, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 7, 2008, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change No. SR-DTC-2008-07. The Commission is publishing this notice to solicit comments from interested parties on the proposed rule change as described in Items I, II, and III below, which items

have been prepared primarily by the DTC.²

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

DTC is proposing to enhance its Profile Modification System in order to allow a "move all" instruction and to allow a second taxpayer identification number or social security number to be used to verify instructions. DTC is also proposing to impose new participant fees to reimburse transfer agents for the cost of implementing and maintaining the proposed Profile enhancements.

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 DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.³

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

1. Purpose

The Direct Registration System ("DRS") allows investors to hold their securities positions on the records of the issuer in book-entry form rather than in certificated form. In May 2000, DTC established the Profile Modification System ("Profile") which allows its participants (*i.e.*, broker-dealers and banks) and DRS Limited Participants (*i.e.*, transfer agents) to electronically change an investor's securities positions from street-name ownership to direct registration book-entry position and vice versa.⁴ Specifically, Profile allows

² The exact text of the DTC's proposed rule change can be found at http://www.dtcc.com/legal/rule_filings/dtc/2008.

³ The Commission has modified portions of the text of the summaries prepared by the DTC.

⁴ Transfer agents acting as DRS Limited Participants must meet certain criteria established by DTC, which includes, among other things, that the transfer agent also be eligible to participate in DTC's Fast Automated Securities Transfer Program ("FAST"). For securities that are part of FAST, the DRS Limited Participants hold the securities registered in the name of DTC's nominee, Cede & Co., in the form of balance certificates. As additional securities are deposited or withdrawn ("deposit-by-transfer" and "withdrawal-by-transfer", respectively) from DTC, the DRS Limited Participant adjusts the denomination of the balance

²⁶ Pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

²⁷ See *supra* note 5.

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).