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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [17] and subparagraph (f)(6) of Rule 19b–4 thereunder.[18]

A proposed rule change filed under 19b–4(f)(6) normally does not become operative until 30 days after the date of filing.[19] However, Rule 19b–4(f)(6)(iii) [20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that the proposed relief is limited in nature, and that the benefits of the proposed relief outweigh the potential harms. Moreover, given the rapidity of recent developments with respect to Fannie Mae and Freddie Mac, the Exchange believes that immediate effectiveness is required in order to avoid significant disruption to the market.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore grants the Exchange's request and designates the proposal to be operative upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 No. SR–NYSE–2008–81 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSE–2008–81. 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, 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 NYSE. 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–NYSE–2008–81 and should be submitted on or before October 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21333 Filed 9–12–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58469; File No. SR–NYSEArca–2008–92]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing of MacroShares Major Metro Housing Trusts

September 5, 2008.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 25, 2008, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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

Pursuant to the provisions of section 19(b)(1) of the Act,[4] the Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities" or the "Corporation") proposes to list and trade under NYSE Arca Equities Rule 8.400 ("Paired Trust Shares") the shares of the MacroShares Major Metro Housing Up Trust ("Up Trust") and the MacroShares Major Metro Housing Down Trust ("Down Trust") (collectively, 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 the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] *Id.* In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied this requirement.

[20] *Id.*

[21] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

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 those 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 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 the Up MacroShares and the Down MacroShares under Rule 8.400.[5] 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.[6]

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 undivided beneficial interests in the Up Trust and the Down Trust, respectively. The Shares are ''Trading Shares'' as defined in NYSE Arca Equities Rule 8.400(b)(1)(B).

The assets of the Down Trust will consist of an income distribution agreement and settlement contracts entered into with the Up Trust. Similarly, the assets of the Up Trust will consist of an income distribution agreement and settlement contracts entered into with the Down Trust.[7] 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. The trustee for the Trusts is State Street Bank and Trust Company (''Trustee'').

The Trusts will make quarterly distributions of net income, if any, 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. Quarterly distributions of net income, if any, will be made on distribution dates that are scheduled to occur in April, July, October and January of each year. Each quarterly and final distribution will be based on the value of the S&P/Case-Shiller Composite-10 Home Price Index (''Index''), as well as on prevailing interest rates on U.S. Treasury obligations. The last published value of the S&P/Case-Shiller Composite-10 Home Price Index is referred to as the ''Reference Value of the Index'' or ''Reference Value'', as discussed below.[8]

The starting level for the Reference Value of the Index for purposes of the transactions described in the Registration Statements is 181.48.[9] If the Reference Value rises above its starting level, the Up Trust's Underlying Value (as described below) will increase to 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 a ''leverage factor'' of 2. Conversely, if the level of the Reference Value of the Index falls below its starting level on and after the closing date, 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, such portion being multiplied by the leverage factor.

Under the income distribution agreement, as of any distribution date, each Trust will either (a) be required to pay 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 Reference Value 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 Reference Value of the Index on the last calendar day preceding the final scheduled termination day, an early termination day or the relevant redemption date.[10]

The Reference Value of the Index

The amount of each payment required to be made by the paired trusts under the income distribution agreement will be based on the daily level of the Reference Value of the Index during the preceding calculation period and the amount of the settlement payment to be made under the settlement contracts will be based on the Reference Value of the Index on the day preceding the business day on which those payments are made on a redemption date, an early

[5] 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 for listing and trading the same 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). In addition, the Commission has approved a proposed rule change to amend NYSE Arca Equities Rule 8.400 to permit listing and trading of MacroShares Medical Inflation Up Trust and the MacroShares Medical Inflation Down Trust, which are similar in structure to the Trusts. *See* Securities Exchange Act Release No. 58312 (August 5, 2008), 73 FR 46689 (August 11, 2008) (SR–NYSEArca–2008–63). The Trusts will be listed and traded pursuant to NYSE Arca Equities Rule 8.400 as amended in SR–NYSEArca–2008–63.

[6] The Shares are being offered by the Trusts under the Securities Act of 1933, as amended, 15 U.S.C. 77a. On August 6, 2008, the depositor filed with the Commission Registration Statements on Form S–1 (Amendment No. 1) for the Up MacroShares (File No. 333–151522) (''Up Trust Registration Statement'') and for the Down MacroShares (File No. 333–151523)(''Down Trust Registration Statement'', and, together with the Up Trust Registration Statement, ''Registration Statements''). Descriptions herein relating to the operation of the Trusts and the S&P/Case-Shiller Home Price Indices are based on the Registration Statements.

[7] The income distribution agreement and applicable settlement contracts are attached as exhibits to the Registration Statements.

[8] The Reference Value of the Index is the Reference Price for purposes of NYSE Arca Equities Rule 8.400.

[9] This figure is as of July 29, 2008 and is subject to updating to be included in the Registration Statements upon effectiveness.

[10] The final distribution made on the Up MacroShares or Down 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 or Down Trust, respectively, on the last calendar day, whether or not such day is a business day, that precedes such final scheduled termination date, early termination date, or redemption date. Underlying Value will be calculated for each day based upon the Reference Value of the Index for that day. The Underlying Value of the Up Trust or Down Trust on each day of measurement represents the aggregate amount of the assets in the paired trusts to which the Up Trust or Down Trust would be entitled if the settlement contracts were settled on that day. The Underlying Value of the Up Trust or Down Trust on each day of measurement also represents the aggregate final distribution to which holders of the Up MacroShares would be entitled if those shares were redeemed on that day.

The Underlying Value of a Trust will be equal, on any calendar day occurring during any Calculation Period, for so long as the proportion of assets on deposit in the Up and Down Trust is one-to-one. The methodology for calculating the Underlying Value for the Trusts is described in the Registration Statements.

termination date or the final scheduled termination date. The term ''Reference Value of the Index'' refers to the value of the Index, as calculated and published by Standard & Poor's (''S&P'') on the most recent Index Publication Day.[11] If the relevant date of measurement is an Index Publication Day, then the Reference Value of the Index will be the value calculated and published on that day. The Index is maintained and governed by the S&P/ Case-Shiller Index Committee, whose members are drawn from S&P, Fiserv Fulfillment Services, Inc. and leading industry experts; S&P designates the Index Committee Chairman and its representatives retain the controlling majority of such committee.

The S&P/Case-Shiller Home Price Indices (''Indices'') measure the change in home prices in one or several geographic regions of the United States. They are calculated monthly and are publicly available for 20 major metropolitan areas (Metropolitan Statistical Areas or MSAs), which are also aggregated to form two composites—one comprised of 10 of the metro areas, the other comprised of all 20. The S&P/Case-Shiller Composite-10 Home Price Index is a weighted average of the following 10 S&P/Case-Shiller Metro Area Home Price Indices: the S&P/Case-Shiller Boston Home Price Index, the S&P/Case-Shiller Chicago Home Price Index, the S&P/Case-Shiller Denver Home Price Index, the S&P/ Case-Shiller Las Vegas Home Price Index, the S&P/Case-Shiller Los Angeles Home Price Index, the S&P/Case-Shiller Miami Home Price Index, the S&P/Case-Shiller New York City Area Home Price Index, the S&P/Case-Shiller San Diego Home Price Index, the S&P/Case-Shiller San Francisco Home Price Index, and the S&P/Case-Shiller Washington, DC Home Price Index. The value of the Index on any Index Publication Day reflects home prices for the second calendar month preceding the month in which such Index Publication Day occurs.

The Index is the result of a combination, based on a market weighted average, of ten of the Indices for separate MSAs. The current Index component weights and the factors considered in calculating the separate Indices on which the Index is based are described below.[12]

Overview of the S&P/Case-Shiller Home Price Indices and the Index

The Indices measure changes in housing market prices given a constant level of quality. Changes in the types and sizes of houses or changes in the physical characteristics of houses are specifically excluded from the calculations to avoid incorrectly affecting the applicable index value.

The Indices use the ''repeat sales method'' of index calculation—an approach that is widely recognized as the premier methodology for indexing housing prices—which uses data on properties that have sold at least twice, in order to capture the true appreciated value of each specific sales unit.

The Indices originated in the 1980s by Case Shiller Weiss's research principals, Karl E. Case and Robert J. Shiller. At the time, Case and Shiller developed the repeat sales pricing technique. According to the Registration Statements, this methodology is recognized as the most reliable means to measure housing price movements and is used by other home price index publishers, including the Office of Federal Housing Enterprise Oversight (OFHEO).

Eligibility Criteria

The Indices are designed to measure, as accurately as possible, changes in the total value of all existing single-family housing stock. The methodology samples all available and relevant transaction data to create matched sale pairs for pre-existing homes.

The Indices do not sample sale prices associated with new construction, condominiums, co-ops/apartments, multi-family dwellings, or other properties that cannot be identified as single-family.

The factors that determine the demand, supply, and value of housing are not the same across different property types. Consequently, the price dynamics of different property types within the same market often vary, especially during periods of increased market volatility. In addition, the relative sales volumes of different property types fluctuate, so Indices that are segmented by property type will more accurately track housing values.

MSA Index Construction

The Indices are based on observed changes in home prices. They are designed to measure increases or decreases in the market value of residential real estate in 20 defined MSAs and three price tiers—low, middle and high. In contrast, the Indices are, specifically, not intended to measure recovery costs after disasters, construction or repair costs, or other such related items.

The Indices are calculated monthly by FISERV, using a three-month moving average algorithm. Home sales pairs are accumulated in rolling three-month periods, on which the repeat sales methodology is applied. The index point for each reporting month is based on sales pairs found for that month and the preceding two months. For example, the December 2005 index point is based on repeat sales data for October, November and December of 2005. This averaging methodology is used to offset delays that can occur in the flow of sales price data from county deed recorders and to keep sample sizes large enough to create meaningful price change averages.

To calculate the Indices, data are collected on transactions of all residential properties during the months in question. The main variable used for index calculation is the price change between two arms-length sales of the same single-family home. Home price data are gathered after that information becomes publicly available at local recording offices across the country. Available data usually consist of the address for a particular property, the sale date, the sale price, the type of property, and in some cases, the name of the seller, the name of the purchaser, and the mortgage amount.

For each home sale transaction, a search is conducted to find information regarding any previous sale for the same home. If an earlier transaction is found, the two transactions are paired and are considered a ''repeat sale.'' Sales pairs are designed to yield the price change for the same house, while holding the quality and size of each house constant.

All available arms-length transactions for single-family homes are candidates for sale pairs. When they can be identified, transactions with prices that do not reflect market value are excluded from sale pairs. This includes: (1) Non-arms-length transactions (*e.g.*, property transfers between family members); (2) transactions where the property type designation is changed (*e.g.*, properties originally recorded as single-family homes are subsequently recorded as condominiums); and (3) suspected data errors where the order of magnitude in values appears unrealistic.

Each sales pair is aggregated with all other sales pairs found in a particular MSA to create the MSA-level index. 10

[11] ''Index Publication Day'' means the business day in each month on which S&P publishes the value for the S&P/Case-Schiller Composite-10 Home Price Index for the second preceding month.

[12] The current normalized composite weights for the Index are as follows: Year 2000 on—Boston: 0.07412188, Chicago: 0.08886762, Denver: 0.03682453, Las Vegas: 0.01480245, Los Angeles: 0.21161961, Miami: 0.04986164, New York: 0.27239040, San Diego: 0.05513356, San Francisco: 0.11787881, Washington, DC: 0.07849949. Source: Standard & Poor's (S&P/Case-Shiller Home Price Indices Methodology) and Fiserv.

of the 20 Indices are then combined by S&P, using a market-weighted average, to create the Index (as noted above).[13]

The Weighting of Sales Pairs

The Indices are designed to reflect the average change in all home prices in a particular geographic market. However, individual home prices are used in these calculations and can fluctuate for a number of reasons. In many of these cases, the change in value of the individual home does not reflect a change in the housing market of that area; it only reflects a change in that individual home. The index methodology addresses these concerns by weighting sales pairs.

Different weights are assigned to different changes in home prices based on their statistical distribution in that geographic region. The goal of this weighting process is to measure changes in the value of the residential real estate market, as opposed to atypical changes in the value of individual homes. These weighting schemes include:

If there is a large change in the prices of a sales pair relative to the statistical distribution of all price changes in the area, then it is possible that the home was remodeled, rebuilt or neglected in some manner during the period from the first sale to the second sale. Or, if there were no physical changes to the property, there may have been a recording error in one of the sale prices, or an excessive price change caused by idiosyncratic, non-market factors. Since the Indices seek to measure homes of constant quality, the methodology will apply smaller weights to homes that appear to have changed in quality or sales that are otherwise not representative of market price trends.

Data related to homes that sell more than once within six months are excluded from the calculation of any Indices. Historical and statistical data indicate that sales made within a short interval often indicate that one of the transactions: (1) Is not arms-length, (2) precedes or follows the redevelopment of a property, or (3) is a fraudulent transaction.

Sales pairs are also weighted based on the time interval between the first and second sales. If a sales pair interval is longer, then it is more likely that a house may have experienced physical changes. Sales pairs with longer intervals are, therefore, given less weight than sales pairs with shorter intervals.

Each sales pair is assigned a weight equal to the first sale price to ensure that the Indices track the aggregate/average value of all homes in a market.

Index Governance

The S&P/Case-Shiller Home Price Indices and the Index are maintained and governed by the S&P/Case-Shiller Index Committee. The Index Committee members are drawn from S&P, Fiserv Fulfillment Services, Inc. and leading industry experts; S&P designates the Index Committee Chairman. The Index Committee has complete discretion to determine how the Indices and the Index are calculated. In addition, the Index Committee may revise index policy covering rules for selecting houses to be considered for the index and extraordinary events, such as natural disasters, that may result in special consideration in the index in any given month. S&P considers information about changes to the Indices and related matters to be potentially market moving and material. Therefore, all Index Committee discussions are confidential. The Index Committee has no broker-dealer members.[14]

For more information on the index construction process, pairing sales, controlling data quality, index maintenance, and the repeat sales methodology, see the ''S&P/Case-Shiller Home Price Indices: Index Methodology'' document, available at *http://www.macromarkets.com*.

Termination Triggers

Following the occurrence of specified events, referred to in the Registration Statements as ''Termination Triggers,'' the income distribution agreement and the settlement contracts will automatically terminate and the Trustee will redeem all of the Paired Shares on the next scheduled Distribution Date. Among the events that will constitute Termination Triggers are the following:

—S&P fails to publish the Index or S&P fails to make the Reference Value of the Index available to the Paired Trusts for purposes of calculating Underlying Value, in either case, for 3 consecutive Index Publication Days;
—On any Index Publication Day, the Index rises to or above 258.61,[15] at which point the Down Trust would be entitled to approximately 85% of the Up Trust's assets under the settlement contracts, or the Index falls to or below 104.35,[16] at which point the Up Trust would be entitled to approximately 85% of the Down Trust's assets under the settlement contracts, and remains at or above this value or at or below this value, as applicable, for the next two (2) consecutive Index Publication Days;
—The Down MacroShares and/or the Up MacroShares are delisted by NYSE Arca. Additional Termination Triggers are described in the Registration Statements.

Calculation of Underlying Value

The Final Distribution made on the Down MacroShares on the Final Scheduled Termination Date, an Early Termination Date or a Redemption Date will be based upon the Underlying Value of the Down Trust on the last calendar day that precedes the Final Scheduled Termination Date, an Early Termination Date or the relevant Redemption Date. Underlying Value will be calculated for each calendar day based upon the Reference Value of the Index. The Underlying Value of the Down Trust on any date of measurement 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 Underlying Value of the Down Trust on each day also represents the aggregate Final Distribution to which holders of the Down MacroShares would be entitled if those Shares were redeemed on that day. The Underlying Value of the Up Trust on any 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. The Underlying Value of the Up Trust on each day also represents the aggregate Final Distribution to which holders of the Up MacroShares would be entitled if those shares were redeemed on that day.

An increase in the Reference Value of the Index results in a proportionate decrease in the Underlying Value of the Down Trust, multiplied by the leverage factor. A decrease in the Reference Value of the Index results in a proportionate increase in the Underlying Value of the Down Trust, multiplied by the leverage factor. After the closing date, the Reference Value of the Index may fluctuate above or below a ''starting level'' of 181.48.[17] The proportion of the funds in the Down Trust and the Up Trust will initially be 1:1 and this proportion will be sought to be maintained throughout the entire

[13] *See* note 11, *supra*.

[14] S&P employee Index Committee members and any other S&P employees with access to S&P/Case-Shiller index data are subject to The McGraw-Hill Companies, Inc. Code of Business Ethics and to additional policies that prohibit insider trading and that cover securities trading, information security and information dissemination.

[15] *See* note 9, *supra*.

[16] *See* note 9, *supra*.

[17] *See* note 9, *supra*.

transaction by virtue of the requirement that redemptions and issuances must be done in MacroShares Units composed of 50,000 Down MacroShares and 50,000 Up MacroShares. The Underlying Value formula as described in the Registration Statements, and the requirement that Down MacroShares can only be issued and redeemed in paired optional redemptions and paired issuances and only in the form of MacroShares Units, is intended to ensure that a change of 3.63 [18] in the Reference Value of the Index will always result in a $1 change in the per share Underlying Value of each Down MacroShare.

The impact of changes in the Reference Value of the Index is multiplied by the leverage factor. The ratio of the ending level of the Reference Value of the Index to the starting level of the Reference Value of the Index on the closing date, will yield a settlement factor by which the assets held on deposit by the Down 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, which is equal to 2. The effect of this is to double any increase in the Underlying Value of the Down Trust as well as to double any decline in that Underlying Value, making the per share Underlying Value and the market price of Down MacroShares potentially more volatile than the housing prices which those shares reference.

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 MacroMarkets LLC, the administrative agent.[19] 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 Underlying Value 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 Registration Statements include a number of hypothetical scenarios of circumstances that will impact the Underlying Value of an Up MacroShare and a Down MacroShare.

For more information regarding the Shares, the Trusts, the Reference Value, Income Distribution, Redemption Final Distribution, risks, fees and expenses, Termination Triggers, and creation and redemption procedures, see the Registration Statements.

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, the Trustee 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. The Trustee will then provide such values to the administrative agent, who will post them on its Web site located at *http://www.macromarkets.com*. The Trustee will base its calculation of the Underlying Values for any business day on the administrative agent's calculation of the Reference Values for the preceding day (regardless of whether that preceding day is a business day or non-business day), which it will provide to the Trustee. The Underlying Values will be disseminated to all market participants at the same time.

An intraday indicative value will not be disseminated for the Trusts. The Exchange believes that an intraday indicative value for the Trusts would not provide an accurate approximation of the value of Shares of the Trusts. As noted above, the Reference Price, (in the case of the Up MacroShares and Down MacroShares, the Reference Value), is based on the monthly value of the Index. 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 market price and volume of the Shares is and 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.

Announcements regarding the levels for the Index and the Indices are made at 9:00 a.m. Eastern Time on the last Tuesday of each month, and are made available to all market participants at the same time. Such levels are available through major market data vendors (*e.g.*, Bloomberg, and Reuters). Press releases are posted at Standard and Poor's Web site at *http://www.indices.standardandpoors.com* and are released to major news services. Historical data regarding the Index and the Indices are published at *http://www.indices.standardandpoors.com*.

The Index and the Indices are disseminated to all market participants at the same time.

Initial and Continued Listing Criteria

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 Corporation 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 Corporation will remove from listing the Up MacroShares or the Down MacroShares under the circumstances outlined in 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 Reference Value, unless the Corporation files with the Commission a related proposed rule change pursuant to Rule

[18] *See* note 9, *supra*.

[19] Authorized participants must also pay a transaction fee of $2,000 for any paired redemption or issuance.

19b–4 under the Exchange Act [20] 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 Corporation makes further dealings on the Corporation inadvisable.

Rule 8.400(d)(2) also provides that the Corporation 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 Corporation may consider other factors that may be relevant.

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) 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 Values per Share are 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.

[20] 20 17 CFR 240.19b–4.

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.[21]

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. 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),[22] 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 Statements. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under section 6(b)(5) [23] 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 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 NYSE Arca Equities 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.

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

[21] For a list of the current members of ISG, see *http://www.isgportal.org.*

[22] 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).

[23] 15 U.S.C. 78f(b)(5).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

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–2008–92 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–2008–92. 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 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–2008–92 and should be submitted on or before September 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–21329 Filed 9–12–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58473; File No. SR–NYSEArca–2008–97]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Rule Change by NYSE Arca, Inc. Amending Its Schedule of Fees and Charges for Exchange Services in Order To Establish a New Fee for Electronically Executed Complex Orders

September 8, 2008.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 5, 2008, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self–regulatory organization. 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 its Schedule of Fees and Charges for Exchange Services ("Schedule") in order to establish certain Transaction Fees.

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 those 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 parts of such statements.

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

1. Purpose

The purpose of this filing is to amend the existing Schedule in order to create a new fee structure covering electronically executed Complex Orders.[4]

Pursuant to a recent rule filing[5] the Exchange will be introducing automated complex order trading for all market participants on NYSE Arca. In conjunction with this new functionality, the Exchange proposes to introduce two new transaction fees specific to Complex Order executions. Pursuant to this proposal, electronically entered and executed Complex Orders when executed against similar contra-side Complex Orders will be subject to a reduced transaction fee.

Complex Orders that are executed against other similar Complex Orders will be subject to a transaction fee of $0.10 per contract. For example, if a Complex Order, comprised of two legs, executes against a similar two-legged Complex Order, each market participant will be charged $0.20 ($0.10 per contract). To expand on this example, if the same strategy is executed a total of ten (10) times, each participant would be charged $2.00. If a Complex Order comprised of three legs executes against a similar three-legged Complex Order, then each participant would be charged $0.30 for the transaction. To expand on this example, if the same three-legged Complex Order is executed a total of ten (10) times, each participant would be changed $3.00. All electronically executed Complex Orders, regardless of whether they are entered by Market Makers, Brokers Dealers, or OTP Firms representing Public Customers, will be billed this same rate when their order is executed against another Complex Order.

---

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] NYSE Arca Rule 6.62(e) defines a "Complex Order" as any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.

[5] *See* Securities Exchange Act Release No. 58174 (July 16, 2008), 73 FR 42640 (July 22, 2008) (order approving SR–NYSEArca–2008–54, establishing rules pertaining to automated electronic trading of Complex Orders).