

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-FINRA-2008-053) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59081; File No. SR-Phlx-2008-79]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Reduction of Option Limit Order Exposure Periods From Three Seconds to One Second

December 11, 2008.

I. Introduction

On November 10, 2008, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange"), 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 reduce certain order exposure periods from three seconds to one second. The proposed rule change was published for comment in the **Federal Register** on November 25, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposal

The purpose of the proposed rule change is to reduce the exposure time during which Order Entry Firms⁴ may not execute as principal against orders they represent as agent from three seconds to one second. Specifically, the Exchange proposes to amend Exchange Rule 1080(c)(1), which currently provides that Order Entry Firms may not execute as principal against orders on the limit order book they represent

as agent unless such agency orders are first exposed on the limit order book for at least three seconds, the Order Entry Firm has been bidding or offering on the Exchange for at least three seconds prior to receiving an agency order that is executable against such order, or the Order Entry Firm proceeds in accordance with the crossing rules contained in Exchange Rule 1064.⁵ In addition, the Exchange proposes to amend Exchange Rule 1080(c)(2), which provides that Order Entry Firms must expose orders they represent as agent for at least three seconds before such orders may be automatically executed, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders. Under the proposal, these three-second exposure periods would be reduced to one second.

III. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,⁸ which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that, given the electronic environment of Phlx XL, reducing each of these exposure periods from three seconds to one second could facilitate the prompt execution of orders, while continuing to provide

market participants with an opportunity to compete for exposed bids and offers. To substantiate that Phlx members could receive, process, and communicate a response back to the Exchange within one second, the Exchange stated that it distributed a survey to its members that regularly participate in orders executed on Phlx XL that would be affected by the proposal. Phlx stated that the survey results indicated that it typically takes not more than 250 milliseconds for members to receive, process, and respond to orders exposed on the limit order book. According to Phlx, members who responded to the survey also indicated that reducing the exposure period to one second would not impair their ability to participate in orders affected by the proposal.⁹ Based on Phlx's statements regarding the survey results, the Commission believes that market participants should continue to have opportunities to compete for exposed bids and offers within a one second exposure period. Accordingly, the Commission believes that it is consistent with the Act for Phlx to reduce the order handling and exposure times discussed herein from three seconds to one second.

The Commission finds good cause to approve the proposed rule change prior to the thirtieth day after publication for comment in the **Federal Register**. The Commission notes that the proposed rule change was noticed for a fifteen-day comment period, and no comments were received. The Commission believes that the Exchange has provided reasonable support for its belief that the Exchange's market participants would continue to have an opportunity to compete for exposed bids and offers if the exposure periods were reduced to one second as proposed. Finally, the Commission also notes that the proposed rule change is similar to recently approved proposals submitted by the Chicago Board Options Exchange, Incorporated and the International Securities Exchange, LLC.¹⁰ Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹¹ to approve the proposed rule change on an accelerated basis.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58949 (November 14, 2008), 73 FR 71709 ("Notice").

⁴ The term "Order Entry Firm" means a member organization of the Exchange that is able to route orders to the Exchange's AUTOM system. See Exchange Rule 1080(c)(ii)(A)(1).

⁵ Exchange Rule 1064 sets forth the procedures that must be followed before an Options Floor Broker who holds orders to buy and sell the same option series may cross such orders.

⁶ 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).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(b)(8).

⁹ The Phlx stated that all of the eight members that responded to the timing questions indicated that reducing the crossing exposure timer to one second would not impair their ability to participate in orders affected by this proposal. See Notice.

¹⁰ See Securities Exchange Act Release Nos. 58088 (July 2, 2008), 73 FR 39747 (July 10, 2008) (SR-CBOE-2008-16) and 58224 (July 25, 2008), 73 FR 44303 (July 30, 2008) (SR-ISE-2007-94).

¹¹ 15 U.S.C. 78s(b)(2).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-Phlx-2008-79), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59070; File No. SR-NASDAQ-2008-092]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Trade the Shares of the MacroShares \$100 Oil Up Trust and the MacroShares \$100 Oil Down Trust

December 9, 2008.

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 December 1, 2008, The NASDAQ Stock Market LLC (“Nasdaq” or the “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 Nasdaq. Nasdaq has designated the proposed rule change as constituting a rule change under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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

Nasdaq proposes to trade, pursuant to unlisted trading privileges (“UTP”), 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 from Nasdaq’s Web site at <http://nasdaq.cchwallstreet.com>, at Nasdaq’s principal office, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

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

1. Purpose

Nasdaq proposes to trade the Shares pursuant to UTP. The Commission has recently approved the substantially identical filing of NYSE Arca, Inc. for the listing and trading of the same product.⁵ Also, the Commission has previously approved the listing and/or trading of a product similar to the Shares.⁶ The Up MacroShares and the Down MacroShares will be offered by the Up Trust and the Down Trust, respectively, established by MACRO Securities Depositor LLC, as depositor, under the laws of the State of New York. The Trusts are not registered with the Commission as investment companies.⁷

⁵ See Securities Exchange Act Release No. 58873 (October 28, 2008), 73 FR 65709 (November 4, 2008) (SR-NYSEArca-2008-110) (“NYSE Arca Order”).

⁶ The Commission approved the trading of a similar product on Nasdaq pursuant to UTP when it approved Securities Exchange Act Release No. 55740 (May 10, 2007) (SR-NASDAQ-2007-048), 72 FR 27889 (May 17, 2007) (approving UTP trading of Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares). See also 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).

⁷ 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

The Trusts are currently listed on NYSE Alternext U.S. LLC (“NYSE Alternext US” (formerly, the American Stock Exchange LLC (“Amex”))) and are traded pursuant to UTP.⁸ Prior to listing on NYSE Arca, Inc., the Trusts would be required to satisfy the applicable delisting procedures of NYSE Alternext U.S. and applicable statutory and regulatory requirements, including, without limitation, Section 12 of the Act,⁹ relating to listing the Shares on NYSE Arca, Inc.¹⁰

Nasdaq deems the Shares to be equity securities, thus rendering the trading in the Shares subject to its existing rules governing the trading of equity securities, including Nasdaq Rule 4630, which governs trading of Commodity-related Securities. The Shares will trade on Nasdaq from 7 a.m. until 8 p.m. Eastern Time (“ET”).¹¹ The Trusts have represented that they are relying on the exemption provided for passive trusts under Rule 10A-3(c)(7)¹² under the Act with respect to establishment of an independent audit committee.

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.¹³

Availability of Information

Intraday Indicative Values. Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Tape Association (“CTA”). Throughout each price determination day, NYSE

MacroShares (File No. 333-150282-02) (“Down Trust Registration Statement” and together with the Up Trust Registration Statement, the “Registration Statements”).

⁸ 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).

⁹ 15 U.S.C. 78(l).

¹⁰ NYSE Arca, Inc. has represented that it will seek the voluntary consent of the issuer of the Shares to be delisted from NYSE Alternext U.S. and listed on NYSE Arca, Inc. NYSE Arca, Inc. has noted that its approval of the Trusts’ listing applications would be required prior to listing. See NYSE Arca Order, *supra* note 3, 73 FR at 65710.

¹¹ See E-mail from Jonathan Cayne, Associate General Counsel, NASDAQ OMX to Mitra Mehr, Special Counsel, Division of Trading and Markets, Commission, dated December 8, 2008 (clarifying trading hours).

¹² 17 CFR 240.10A-3(c)(7).

¹³ Terms relating to the Trusts referred to, but not defined herein, are defined in the Registration Statements.

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).