

Number SR–NYSEAmex–2009–03 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEAmex–2009–03. 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 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–NYSEAmex–2009–03 and should be submitted on or before April 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59678; File No. SR–NYSEArca–2009–14]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Leverage Factor Applicable to the MacroShares Major Metro Housing Trusts

April 1, 2009.

On March 3, 2009, 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 modify the representation made in SR–NYSEArca–2008–92³ regarding the leverage factor applicable to the MacroShares Major Metro Housing Up Trust (“Up Trust”) and the MacroShares Major Metro Housing Down Trust (“Down Trust”) (collectively, the “Trusts”) and, specifically, to indicate that the leverage factor to be applied will be 3 rather than 2.⁴ The proposed rule change was published in the **Federal Register** on March 16, 2009 for a 15-day comment period.⁵ The Commission received no comments on the proposal. This order grants approval to the proposed rule change on an accelerated basis.

I. Description of the Proposal

The Commission previously approved, pursuant to Section 19(b)(2) of the Act, the Exchange's proposal to list and trade the Up MacroShares and the Down MacroShares as Paired Trust Shares under NYSE Arca Equities Rule 8.400.⁶

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 58704 (October 1, 2008), 73 FR 59026 (October 8, 2008) (order approving listing and trading on the Exchange of the Trusts (“Approval Order”)); See also Securities Exchange Act Release No. 58469 (September 5, 2008), 73 FR 53306 (September 15, 2008) (SR–NYSEArca–2008–92) (notice of proposed rule change to list and trade the Trusts on the Exchange) (“Initial Notice”). The Shares are being offered by the Trusts under the Securities Act of 1933, 15 U.S.C. 77a. On February 17, 2009, the depositor filed with the Commission preliminary Registration Statements on Form S–1 (Amendment No. 3) for the Up MacroShares (File No. 333–151522) and for the Down MacroShares (File No. 333–151523) (“Registration Statements”).

⁴ Shares of the Up Trust and the Down Trust are referred to collectively as “Shares.”

⁵ See Securities Exchange Act Release No. 59542 (March 9, 2009), 74 FR 11167 (“Notice”).

⁶ See Approval Order, *supra* note 3.

As described in the Approval Order and the Initial Notice, the Up Trust and the Down Trust intend to issue Up MacroShares and Down MacroShares, respectively, on a continuous basis. The Up MacroShares and the Down MacroShares represent undivided beneficial interests in the Up Trust and the Down Trust, respectively.

The Trusts will make quarterly distributions and a final distribution that is 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 in the Initial Notice.⁷

If the Reference Value rises above its specified starting level, the Up Trust's Underlying Value (as described in the Initial Notice) 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 specified “leverage factor.” 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.

The Initial Notice stated that the leverage factor would be 2, as initially described in the Registration Statements. The Trusts now intend to utilize a leverage factor of 3.⁸ The effect of this will be to triple any increase or decrease in the Underlying Value of the Up Trust or the Down Trust, depending upon whether there is an increase or decrease in the Reference Value of the Index.

Additional information relating to the Trusts and Shares is available in the Registration Statements, the Notice, the Initial Notice and the Approval Order.⁹

II. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the

⁷ The Reference Value of the Index is the Reference Price for purposes of NYSE Arca Equities Rule 8.400.

⁸ With the exception of the proposed change to the leverage factor, and a change in the distribution date from a date in 2018 to a date in 2014, the Exchange states that all representations made by the Exchange in the Initial Notice continue to apply. See Notice, *supra* note 5, 74 FR at 11168, n. 8.

⁹ See *supra* notes 3 and 5.

¹² 17 CFR 200.30–3(a)(12).

requirements of Section 6 of the Act¹⁰ and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹² which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction 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 notes that it has previously approved the listing and trading of the Trusts under NYSE Arca Equities Rule 8.400.¹³ The Commission also notes that the Exchange has represented that, with the exception of the change to the leverage factor applicable to the Trusts, and a change to the distribution date, all prior representations made in the Initial Notice will continue to apply.¹⁴ This approval order is based on the Exchange's representations.

The Commission believes that the increase from 2 to 3 of the leverage factor applicable to the Up MacroShares and the Down MacroShares, respectively, is reasonable to facilitate the listing and trading of the Shares. Additionally, the Commission believes that the increase of the leverage factor should help to increase competition among market participants and benefit investors. The Commission also notes that it has previously approved the listing and trading of other exchange-traded products with up to 300% leverage.¹⁵

¹⁰ 15 U.S.C. 78f.

¹¹ 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).

¹² 15 U.S.C. 78f(b)(5).

¹³ See Approval Order, *supra* note 3.

¹⁴ See *supra* notes 5 and 8.

¹⁵ See e.g., Securities Exchange Act Release Nos. 58825 (October 21, 2008), 73 FR 63756 (October 27, 2008) (SR-NYSEArca-2008-89) (approving amendment to Rule 5.2(j)(3) to permit listing of Investment Company Units where the issuer seeks to provide investment results, before fees and expenses, up to -300% of the percentage performance on a given day of a particular equity index); 59332 (January 30, 2009), 74 FR 6338 (February 2, 2009) (SR-NYSEArca-2008-136) (approving amendment to NYSE Arca Equities Rule 5.2(j)(6) to permit a loss or negative payment at maturity with respect to an issue of Index-Linked Securities to be accelerated by a multiple up to

III. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁶ for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the **Federal Register**. The Commission has received no comments regarding the proposed rule change, and the Commission finds that the proposed rule change does not raise any novel regulatory issues. Additionally, the Commission believes that accelerating approval of this proposal should benefit the market by making available to investors, without undue delay, additional products in the market for Paired Trust Shares.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-NYSEArca-2009-14) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59665; File No. SR-NYSEAmex-2009-05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Equities Rule 48.10 To Extend the Temporary Provisions of the Rule Relating to the Ability of the Exchange To Declare an Extreme Market Volatility Condition and Suspend Certain Exchange Requirements Relating to the Closing of Securities at the Exchange

March 31, 2009.

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 March 23, 2009, NYSE Amex LLC⁴ (the

three times the performance of an underlying Reference Asset, as defined in NYSE Arca Equities Rule 5.2(j)(6)).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ *Id.*

¹⁸ 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 See e-mail from Clare F. Saperstein, Managing Director, Office of General Counsel, NYSE Regulation, Inc., to David Liu, Assistant Director, Commission, dated March 31, 2009.

"Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁵ and Rule 19b-4(f)(6) thereunder,⁶ which renders it 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

The Exchange proposes to amend Equities Rule 48.10 to extend the temporary provisions of the rule relating to the ability of the Exchange to declare an extreme market volatility condition and suspend certain Exchange requirements relating to the closing of securities at the Exchange. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

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

In its filing with the Commission, the 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 amend NYSE Amex Equities Rule 48.10 to temporarily extend the provisions of the rule relating to declaring an extreme market volatility condition at the close.⁷

On November 26, 2008, NYSE Amex filed a rule proposal to conform its rules to those of the New York Stock

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6).

⁷ See SR-NYSE-2009-35 (formally submitted on March 23, 2009).