

proposes to assess members the \$250 monthly fee, regardless of usage, and solely on the number of order entry ports assigned to each member organization. Per this proposal, whether or not the order entry port is active will not be considered in billing the monthly fee of \$250, only the amount of order entry ports per member organization will determine the amount billed to a member organization.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The proposal would continue to uniformly assess the Order Entry Port Fee on members in order to support the costs of the infrastructure associated with market access. The fee remains reasonable in that members will continue to be charged a flat rate for this service based on the number of order entry ports.

### 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 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 either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and paragraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder. 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.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2009-43 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-Phlx-2009-43. 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 Phlx. 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-Phlx-2009-43 and should be submitted on or before June 12, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-11937 Filed 5-21-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59932; File No. SR-NYSEArca-2009-43]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Regarding the Minimum Creation and Redemption Size Applicable to the MacroShares Major Metro Housing Trusts

May 15, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 13, 2009, 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. NYSE Arca filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> 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, through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), proposes to modify the representation made in SR-NYSEArca-2008-92 regarding the minimum creation and redemption size aggregation applicable to 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

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

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 Public Reference Room of the Securities and Exchange Commission (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 Commission has 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 under NYSE Arca Equities Rule 8.400.<sup>6</sup> As described in the Approval Order and 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. As of May 12, 2009, the Shares have not commenced trading on the Exchange.

The assets of the Down Trust will consist of an income distribution agreement and settlement contracts entered into with the Up Trust.

<sup>6</sup> See Securities Exchange Act Release Nos. 58704 (October 1, 2008), 73 FR 59026 (October 8, 2008) (order approving listing and trading on the Exchange of the Trusts ("Approval Order")); 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 ("Notice")). See also, Securities Exchange Act Release No. 59542 (April 1, 2009), 74 FR 15803 (April 7, 2009) ("Modifying Order") (order approving change to the leverage factor applicable to the Trusts). The Shares are being offered by the Trusts under the Securities Act of 1933, 15 U.S.C. 77a. On April 29, 2009, the depositor filed with the Commission preliminary Registration Statements on Form S-1 (Amendment No. 6) for the Up MacroShares (File No. 333-151522) and for the Down MacroShares (File No. 333-151523) ("Registration Statements"). The descriptions herein relating to the operation of the Trusts is based on the Registration Statements.

Similarly, the assets of the Up Trust will consist of an income distribution agreement and settlement contracts entered into with the Down Trust.<sup>7</sup> Each Trust will also hold U.S. Treasuries, repurchase agreements on U.S. Treasuries and cash 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.

As described in the Notice, the Trusts will make quarterly distributions of net income, if any, on the treasuries and a final distribution of all assets they hold 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 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 Index is referred to as the "Reference Value of the Index" or "Reference Value", as discussed in the Notice.

The Notice stated that 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. In addition, the Notice stated that 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.

Since the date of the Approval Order, the Trusts have amended the Registration Statements to provide that the minimum size aggregation for issuance and redemption of Shares will be 10,000 rather than 50,000 Up MacroShares and Down MacroShares (collectively "MacroShare Units"). The Exchange notes that since the Up MacroShares and Down MacroShares are created and redeemed in tandem, the aggregate creation and redemption size of the MacroShares Units will be approximately \$1.25 million upon the initial issuance.<sup>8</sup> The Exchange also notes that the minimum initial issuance

<sup>7</sup> Terms referenced herein relating to the Trusts but not defined are defined in the Registration Statements.

<sup>8</sup> Generally, the aggregate creation and redemption unit size for exchange-traded funds is approximately \$1.25 million upon the initial issuance.

upon commencement of Exchange trading must be at least 100,000 Up MacroShares and Down MacroShares, as specified in the Notice. The Exchange believes that the change to the size of MacroShares Units will not adversely impact investors or Exchange trading. In addition, reduction in the size of MacroShares Units may facilitate creation and redemption activity in Shares, with potential benefits to investors, which may include tighter bid/ask spreads. Aside from the update to the minimum size aggregations for issuance and redemption of Shares, there is no other change to the operation of the Trusts.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>9</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>10</sup> in particular, in that it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the proposed rule change will facilitate the listing and trading of the Shares, which will enhance competition among market participants, to the benefit of investors and the marketplace.

### 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> Because the foregoing proposed rule change: (1) Does not significantly affect the

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms does not become operative for 30 days of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>14</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing.<sup>15</sup> However, Rule 19b-4(f)(6)(iii) 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. In support, the Exchange states that the proposed reduction in the size of the MacroShares Units may facilitate creation and redemption activity in the Shares, which could result in tighter bid/ask spreads.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>16</sup> The proposed rule change seeks to amend a representation the Exchange made in the Notice, to reflect a proposed change in the minimum Share aggregation for issuance and redemption from 50,000 to 10,000 MacroShares Units. The Commission believes that this proposal does not raise any regulatory concerns. The Commission notes that it has previously approved both the listing and trading of Shares of the Trusts on the Exchange, and an amendment to the leverage factor of this product.<sup>17</sup>

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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2009-43 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-NYSEArca-2009-43. 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-2009-43 and should be submitted on or before June 12, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-11940 Filed 5-21-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59934; File No. SR-BATS-2009-013]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.13, entitled "Order Execution"

May 15, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 12, 2009, BATS Exchange, Inc. ("BATS" 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 the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> 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 is proposing to amend BATS Rule 11.13, entitled "Order Execution," to provide Users<sup>5</sup> of the Exchange with another option with respect to the Exchange's method of processing the unfilled balance of a limit order that returns to the Exchange after being routed away to one or more away Trading Centers<sup>6</sup> for execution.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> As defined in BATS Rule 1.5(bb).

<sup>6</sup> As defined in BATS Rule 2.11.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> See *id.* In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of 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. The Exchange has satisfied this requirement.

<sup>16</sup> 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).

<sup>17</sup> See Approval Order and Modifying Order, *supra* note 6.