

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58878; File No. SR-NYSEArca-2008-114)

October 29, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Revise the Listing and Annual Fees Applicable to Paired Trust Shares

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 22, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NYSE Arca. 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

NYSE Arca, through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), is proposing to amend its Schedule of Fees and Charges (“Fee Schedule”) to revise the listing and annual fees applicable to Paired Trust Shares listed on NYSE Arca, LLC (“NYSE Arca Marketplace”), the equities facility of NYSE Arca Equities. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the Exchange’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, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments

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

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

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

NYSE Arca has determined to revise Exchange listing fees under the Exchange’s Schedule of Fees and Charges for Exchange Services (“Fee Schedule”) to include Paired Trust Shares listed under NYSE Arca Equities Rule 8.400 under the term “Structured Products”<sup>3</sup> for purposes of the Fee Schedule, rather than under the term “Derivative Securities Products,”<sup>4</sup> where Paired Trust Shares are currently included. Therefore, the Exchange proposes to delete the term “Paired Trust Shares” from Footnote 3 of the Fee Schedule and to add such term in Footnote 4 of the Fee Schedule.

Under the current Fee Schedule, the Listing Fee for Derivative Securities Products is \$5,000 per issue. The Listing Fee for Structured Products is based on the number of shares outstanding, and ranges from \$5,000 to \$45,000 per issue. The Annual Fee for Derivative

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<sup>3</sup> As set forth in footnote 4 of the Fee Schedule, Structured Products currently are defined as securities listed under Rule 5.2(j)(1) (Other Securities); 5.2(j)(2) (Equity Linked Notes); Rule 5.2(j)(4) (Index-Linked Exchangeable Notes); Rule 5.2(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities); and Rule 8.3 (Currency and Index Warrants).

<sup>4</sup> As set forth in footnote 3 of the Fee Schedule, Derivative Securities Products currently include securities described in NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units); 8.100 (Portfolio Depositary Receipts); 8.200 (Trust Issued Receipts), 8.201 (Commodity-Based Trust Shares); 8.202 (Currency Trust Shares); 8.203 (Commodity Index Trust Shares); 8.204 (Commodity Futures Trust Shares); 8.300 (Partnership Units); 8.400 (Paired Trust Shares); 8.500 (Trust Units); and 8.600 (Managed Fund Shares).

Securities Products is based on the number of shares outstanding per issue, and ranges from \$2,000 to \$25,000. The Annual Fee for Structured Products also is based on the number of shares outstanding per issue, and ranges from \$10,000 to \$55,000.

The Exchange believes Paired Trust Shares<sup>5</sup> are appropriately categorized as Structured Products for purposes of the Fee Schedule. The trusts issuing such securities, like issuers of other categories of Structured Products and unlike issuers of Derivative Securities Products, do not hold underlying securities, commodities, futures or other financial instruments (other than U.S. Treasuries, and repurchase agreements on U.S. Treasuries to secure specified obligations).

In addition, the Exchange proposes to amend punctuation in Footnote 4 of the Fee Schedule and to amend Footnote 4 to add Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities to the securities covered by Rule 5.2(j)(6). Following Commission approval of the most recent amendment to Footnote 4 to the Fee

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<sup>5</sup> Paired Trust Shares currently traded on the Exchange pursuant to Rule 8.400 include shares of the MacroShares Oil Trusts, which are traded on the Exchange pursuant to unlisted trading privileges. See Securities Exchange Act Release No. 58058 (June 30, 2008), 73 FR 38484 (July 7, 2008) (SR-NYSEArca-2008-65). The Commission has approved MacroShares Medical Inflation Trusts for listing on the Exchange pursuant to Rule 8.400. See Securities Exchange Act Release No. 58312 (August 5, 2008), 73 FR 46689 (August 11, 2008) (SR-NYSEArca-2008-63). In addition, the Commission has approved MacroShares Major Metro Housing Trusts for listing on the Exchange pursuant to Rule 8.400. See Securities Exchange Act Release No. 58704 (October 1, 2008), 73 FR 59026 (October 8, 2008) (SR-NYSEArca-2008-92). However, no issue of Paired Trust Shares is currently listed on the Exchange.

Schedule,<sup>6</sup> Rule 5.2(j)(6) was amended to include these securities.<sup>7</sup> The Exchange, therefore, proposes to update Footnote 4 to reflect that such securities are covered by Rule 5.2(j)(6).

## 2. Statutory Basis

NYSE Arca believes that the proposal is consistent with Section 6(b)<sup>8</sup> of the Act, in general, and Section 6(b)(4)<sup>9</sup> of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its issuers and other persons using its facilities. The Exchange believes Paired Trust Shares are appropriately categorized as Structured Products for purposes of the Fee Schedule. The proposed amendment would therefore permit assessment of comparable fees to similarly structured products.

### 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

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<sup>6</sup> See Securities Exchange Act Release No. 56975 (December 17, 2007), 72 FR 73393 (December 27, 2007) (SR-NYSEArca-2007-87) (order approving amendments to Fee Schedule relating to Structured Products).

<sup>7</sup> See Securities Exchange Act Release No. 57701 (April 23, 2008), 73 FR 23281 (April 29, 2008) (SR-NYSEArca-2008-20) (order approving amendments to Rule 5.2(j)(6) relating to Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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 the proposed rule change; or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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-2008-114 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-2008-114. 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 10:00 a.m. and 3:00 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-2008-114 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Florence E. Harmon  
Acting Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).