

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59678; File No. SR-NYSEArca-2009-14)

April 1, 2009

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

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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify the representation made in SR-NYSEArca-2008-92<sup>3</sup> 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.<sup>4</sup> The proposed rule change was published in the Federal Register on March 16, 2009 for a 15-day comment period.<sup>5</sup> The

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

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

<sup>3</sup> 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”).

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

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

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.<sup>6</sup>

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.<sup>7</sup>

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

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<sup>6</sup> See Approval Order, *supra* note 3.

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

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.<sup>8</sup> 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.<sup>9</sup>

## II. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act<sup>10</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>12</sup> 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

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<sup>8</sup> 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.

<sup>9</sup> See supra notes 3 and 5.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 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).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

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<sup>13</sup> See Approval Order, supra note 3.

<sup>14</sup> See supra notes 5 and 8.

<sup>15</sup> 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 three times the performance of an underlying Reference Asset, as defined in NYSE Arca Equities Rule 5.2(j)(6)).

### III. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> 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.

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<sup>16</sup> 15 U.S.C. 78s(b)(2).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> 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.<sup>18</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>17</sup> Id.

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