

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57925; File No. SR-Amex-2008-36)

June 5, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change Relating to the Listing and Trading of Shares of the MacroShares \$100 Oil Up Trust and the MacroShares \$100 Oil Down Trust

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 May 20, 2008, the American Stock Exchange LLC (“Amex” 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 substantially prepared by the Exchange. 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 Amex Rules 1400, 1401, 1402 and 1405 relating to the trading of Paired Trust Shares and to list and trade shares of the MacroShares \$100 Oil Up Trust (“Up Trust”) and the MacroShares \$100 Oil Down Trust (“Down Trust”) (collectively, the “Trusts”) under those rules, as amended. The shares of the Up Trust are referred to as the Up MacroShares, the shares of the Down Trust are referred to as the Down MacroShares, and they are referred to collectively as the “Shares.” The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <http://www.amex.com>.

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

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

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 Exchange 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 these 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 aspects 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 Amex Rules 1400, 1401, 1402 and 1405 relating to the trading of Paired Trust Shares and to list and trade the Shares under those rules, as amended.<sup>3</sup>

The Up MacroShares and the Down MacroShares will be offered by the Up Trust and the Down Trust, respectively. The Trusts were 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.<sup>4</sup>

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<sup>3</sup> The Commission approved the listing and trading of a similar product on the Exchange when it approved new Amex Rules 1400 – 1405. See Securities Exchange Act Release No. 54839 (November 29, 2006), 71 FR 70804 (December 6, 2006) (SR-Amex-2006-82) (approving the listing and trading of Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares). Amex Rules 1403 and 1404 would also be applicable to the Up MacroShares and Down MacroShares described herein, although the Exchange is not proposing to amend those rules.

<sup>4</sup> 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 MacroShares (File No. 333-150282-02) (“Down Trust Registration Statement” and together with the Up Trust Registration Statement, the “Registration Statements”).

a. Amendment to Amex Rules 1400, 1401, 1402 and 1405

The Exchange proposes to amend Amex Rules 1400, 1401, 1402 and 1405, which apply to Paired Trust Shares, to accommodate the listing and trading of the Up MacroShares and the Down MacroShares. In their current form, these rules apply to Paired Trust Shares that consist of Holding Shares and Tradeable Shares.<sup>5</sup>

As described in more detail below, the structure of the series of Paired Trust Shares proposed to be listed and traded on the Exchange pursuant to this proposal varies from the structure contemplated under the current rules for Paired Trust Shares in that there is only one set of trusts instead of two. As a result of a recent interpretation by the staff of the Internal Revenue Service relating to the inability to interpose a grantor trust in order to utilize a certain tax reporting form, the Exchange has been notified that the need for the current two-tier trust structure set forth in Amex Rule 1400 for Paired Trust Shares is no longer necessary.<sup>6</sup> The Exchange represents that there are no substantive differences between the proposed structure (a single set of Trading Trusts that issue Trading Shares and hold financial instruments) and the current two-tier structure (a set of Tradeable Trusts that issue Tradeable Shares and hold Holding Shares issued by a set of Holding Trusts that invest in financial instruments).<sup>7</sup>

Therefore, the Exchange proposes to amend Amex Rules 1400, 1401, 1402 and 1405 to provide for the listing and trading of Paired Trust Shares in the case of a series that has only one set of paired trusts. Under the proposed amendments to Amex Rule 1400, the term “Paired Trust

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<sup>5</sup> Holding Shares are issued by a matched pair of trusts (“Holding Trusts”) in exchange for cash; Tradeable Shares are issued by a different pair of trusts (“Tradeable Trusts”) in exchange for the deposit of Holding Shares.

<sup>6</sup> See email from William Love, Vice President and Associate General Counsel, Amex, to Christopher W. Chow and Ronesha Butler, Special Counsels, Commission, dated May 29, 2008 (“May 29 Email”).

<sup>7</sup> See id.

Shares” refers to: (1) both Holding Shares and any related Tradeable Shares; or (2) solely “Trading Shares,” which is a new defined term. As proposed, Trading Shares has the same definition as Holding Shares, except that it is not required that a majority of Trading Shares be acquired and deposited in a related Tradeable Trust, as it is with Holding Shares. The Exchange proposes conforming changes in Amex Rules 1401, 1402 and 1405.<sup>8</sup>

b. Description of the Shares and the Trusts

The Up Trust and the Down Trust would issue Up MacroShares and Down MacroShares, respectively, on a continuous basis at the direction of authorized participants, as described in more detail below.<sup>9</sup> The Up MacroShares and the Down MacroShares represent undivided beneficial interests in the Up Trust and the Down Trust, respectively.

The assets of each Trust will include an income distribution agreement and settlement contracts entered into with the other Trust. Under the income distribution agreement, as of any distribution date, each Trust will either: (1) be required to pay all or a portion of its available income to the other Trust; or (2) be entitled to receive all or a portion of the other Trust’s available income, based, in each case, on the level of the Applicable Reference Price of Crude Oil (as defined below) for each day during the preceding calculation period. Under each settlement contract, in connection with the final scheduled termination date, an early termination date or any redemption date, each Trust will either be required to make a final payment out of its assets to the other Trust or be entitled to receive a final payment from the other Trust out of the assets of the other Trust, based, in each case, on the change in the level of the Applicable

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<sup>8</sup> In paragraph (b)(i) of Amex Rule 1402, the Exchange also proposes to correct an error that was inadvertently made when the rule was originally adopted by replacing the word “certificates” with the word “shares” (consistent with all other references to shares in the rules for Paired Trust Shares).

<sup>9</sup> See May 29 Email, supra note 6.

Reference Price of Crude Oil from its starting level on the closing date to its ending level on the relevant price determination day preceding the final scheduled termination date, early termination date, or redemption date, as the case may be. Each Trust will also hold U.S. Treasuries and repurchase agreements on U.S. Treasuries (collectively, “treasuries”) to secure its obligations under the income distribution agreement and the settlement contracts.<sup>10</sup>

Each Trust will make quarterly distributions of income on the treasuries and a final distribution of all assets it holds on deposit on the final scheduled termination date, an early termination date or a redemption date.<sup>11</sup> Each quarterly and final distribution will be based on the value of the Applicable Reference Price of Crude Oil, which is defined as the settlement price of the New York Mercantile Exchange (“NYMEX”) division light sweet crude oil futures contract of the designated maturity, as established and reported by the NYMEX on a per barrel basis in U.S. dollars at the end of each price determination day.<sup>12</sup> For this purpose, a price determination day refers to each day on which trading of the light sweet crude oil futures

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<sup>10</sup> See id.

<sup>11</sup> Each Trust’s quarterly distribution to holders of that Trust’s Shares will be made out of the income that it holds on deposit after it has deducted an appropriate amount for fees, either made or received a payment under the income distribution agreement, and acquired treasuries with an aggregate purchase price equal to the aggregate par amount of the outstanding Shares of that Trust on that distribution date. On any distribution date, if a Trust’s actual fees and expenses exceeds its income from the treasuries, there will be a corresponding reduction in the underlying value of the Trust that will be permanent unless it can be made up out of treasury income on future distribution dates, net of fees and expenses on those distribution dates.

Each Trust’s final distribution to holders of that Trust’s Shares will depend on the payments that it is required to make to, or that it is entitled to receive from, the other Trust under the settlement contracts that are settled in connection with the final scheduled termination date, early termination date, or redemption date, as the case may be.

<sup>12</sup> See id.

contract of the designated maturity occurs by open outcry on the trading floor of NYMEX.<sup>13</sup>

The Applicable Reference Price of Crude Oil is the reference value on the basis of which quarterly and final distributions on the Up MacroShares and Down MacroShares are calculated.

With respect to the Up Trust, if the level of the Applicable Reference Price of Crude Oil on any price determination day exceeds its starting level on the closing date (the date on which the Trusts entered into the income distribution agreement), the underlying value of the Up Trust will increase to include all of its assets plus a portion of the assets of the paired Down Trust. Conversely, if the level of the Applicable Reference Price of Crude Oil on any price determination day falls below its starting level, the Up Trust's underlying value will decrease because a portion of its assets will be included in the underlying value of the paired Down Trust. The underlying value of the Up Trust on each price determination day represents the aggregate amount of the assets in the paired Trusts to which the Up Trust would be entitled if the settlement contracts were settled on that day.

With respect to the Down Trust, if the level of the Applicable Reference Price of Crude Oil on any price determination day exceeds its starting level on the closing date, the underlying value of the Down Trust will decrease because a portion of its assets will be included in the underlying value of the paired Up Trust. Conversely, if the level of the Applicable Reference Price of Crude Oil on any price determination day falls below its starting level, the Down Trust's underlying value will increase to include all of its assets plus a portion of the assets of the paired Up Trust. The underlying value of the Down Trust on each price determination day represents

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<sup>13</sup> If trading of the NYMEX division's light sweet crude oil futures contract ceases to occur by open outcry and is transferred by NYMEX to an electronic platform, a price determination day will be based upon trading on such electronic platform.

the aggregate amount of the assets in the paired Trusts to which the Down Trust would be entitled if the settlement contracts were settled on that day.

The Up MacroShares and the Down MacroShares may be issued only in MacroShares Units, consisting of 50,000 Up MacroShares issued by the Up Trust and 50,000 Down MacroShares issued by the Down Trust. The Up Trust and Down Trust will issue their Shares on an ongoing basis at any time after the closing date only to persons who qualify as authorized participants at the per share underlying value of those shares on the business day on which a creation order for the Shares is delivered to and accepted by MacroMarkets LLC, the administrative agent for both Trusts.<sup>14</sup> The Shares may then be sold by authorized participants to the public at the market price prevailing at the time of any such sale.

The Up MacroShares (Down MacroShares) may be redeemed on any business day together with Down MacroShares (Up MacroShares) by any holder who is an authorized participant only in MacroShares Units (as described above) at the respective per Share underlying values of those Shares, as measured on the date on which the applicable redemption order was placed. Unless earlier redeemed on a redemption date or an early termination date, a final distribution will be made on both the Up MacroShares and the Down MacroShares on the distribution date occurring in December of 2013.

The Registration Statements contain 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.

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<sup>14</sup> Authorized participants must also pay a transaction fee of \$2,000 for any paired redemption or issuance. All of the shares created on the closing date will be sold to authorized participants at their underlying value plus a fee of \$0.10 per share, which will be applied to cover the formation costs of the Trusts.

c. Availability of Information Regarding the Shares

Intraday Indicative Values. Throughout each price determination day, the Amex, acting as the calculation agent for each Trust, will calculate and disseminate, at least every 15 seconds during regular Amex trading hours, through the facilities of the Consolidated Tape Association (“CTA”), an estimated value (referred to as an “Intraday Indicative Value” or “IIV”) for the underlying value per Share of both the Up MacroShares and the Down MacroShares. The purpose of this disclosure is to promote liquidity and intraday pricing transparency with respect to these estimated per Share underlying values, which can be used in connection with other related market information. To enable this calculation, the Amex will receive real time price data from the NYMEX through major market data vendors for the light sweet crude oil futures contract of the designated maturity that trades on the NYMEX.<sup>15</sup>

Because the NYMEX market for the light sweet crude oil futures contract will be closed for portions of the Amex trading day, the IIV calculated values will become fixed and will not be updated at such times that the NYMEX contract is not trading.<sup>16</sup> Conversely, at times when the light sweet crude oil futures contract of the designated maturity is trading on NYMEX, those trades will be used to update the IIV values.

The per-Share IIVs disseminated during Amex trading hours should not be viewed as real time updates of the underlying value of an Up MacroShare and a Down MacroShare, as these values are calculated only once a day. The Exchange believes, however, that dissemination of the IIVs provides additional information that is useful to professionals and investors in

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<sup>15</sup> See May 29 Email, supra note 6.

<sup>16</sup> The IIV calculated during the period following the daily opening of trading of the Shares on the Amex but prior to any trades taking place on the NYMEX in the relevant light sweet crude oil futures contract will be based on the final price of the futures contract on the prior trading day.



connection with the trading of the Shares on the Exchange or the creation or redemption of Shares.

The Amex will make available through its in-house systems, for use by the specialist and market makers, the IIV values distributed through the facilities of the CTA. This data will also be available to Amex surveillance systems and personnel for their purposes.

Availability of Other Information and Data. At the end of each price determination day, the Amex will also calculate the premium or discount of the midpoint of the bid/offer for the Up MacroShares at the close on the Amex relative to the underlying value per Share for that price determination day, after the latter is calculated and provided to the Amex by the trustee. The Amex will also perform the same calculation with respect to the Down MacroShares. The Amex will then post these premiums/discounts, together with the end-of-day price information for the Shares, on its Web site (<http://www.amex.com/amextrader>). Further, the Amex will post on its Web site any corrections made by NYMEX to the Applicable Reference Price of Crude Oil that was reported by NYMEX for any price determination day. The Amex also intends to disseminate a variety of data with respect to the Shares on a daily basis by means of CTA and CQ High Speed Lines, including quotation and last sale data information.

On each price determination day, State Street Bank and Trust Company, the trustee for the Up Trust and the Down Trust, will calculate the underlying value of the Up Trust and the Down Trust and the per-Share underlying value of one Up MacroShare and one Down MacroShare, based on the Applicable Reference Price of Crude Oil established and reported by NYMEX. The trustee will then provide such values to the administrative agent, which will post them on its Web site (<http://www.macromarkets.com>). All investors and market participants will have access to the administrative agent's Web site at no charge.

Information regarding secondary market prices and volume of the Shares will be broadly available on a real-time basis throughout the trading day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers.

Delayed information on futures contracts is often publicly available from futures exchanges.<sup>17</sup> Daily settlement prices for the oil futures contract designated as the Applicable Reference Price of Crude Oil for the Shares is publicly available on NYMEX's Web site.<sup>18</sup>

d. Initial and Continued Listing Criteria

Amex Rule 1402 sets forth initial and continued listing criteria applicable to Paired Trust Shares. These criteria are currently applicable to Holding Shares and Tradeable Shares, and the proposed rule change would make them applicable to Trading Shares as well.

A minimum of 150,000 Up MacroShares and 150,000 Down MacroShares will be required to be outstanding at the commencement of trading. The Exchange believes that this minimum number of outstanding Shares at the start of trading is sufficient to provide adequate market liquidity, and it is the same initial minimum requirement that was applicable to the Claymore MACROshares Oil Up Tradeable Shares and the Claymore MACROshares Oil Down Tradeable Shares (the first series of Paired Trust Shares to be listed and traded on the Exchange). The starting level for the Applicable Reference Price of Crude Oil will be \$100 and is based on recent prices for a barrel of light sweet crude oil. The Exchange will obtain a representation on behalf of the Up Trust and the Down Trust that the underlying value per share of each Up Share

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<sup>17</sup> See email from William Love, Vice President and Associate General Counsel, Amex, to Christopher W. Chow and Ronsha Butler, Special Counsels, Commission, dated May 30, 2008 ("May 30 Email").

<sup>18</sup> See id.

and Down Share, respectively, will be calculated daily and will be made available to all market participants at the same time. The Exchange will remove from listing the Up MacroShares or the Down MacroShares under the following circumstances, pursuant to proposed Amex Rule 1402:

- if following the initial twelve month period following the commencement of trading of the Shares: (1) the Up Trust or the Down Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Up MacroShares or Down MacroShares, respectively, for 30 or more consecutive trading days; (2) if the Up Trust or the Down Trust has fewer than 50,000 Up MacroShares or Down MacroShares, respectively, issued and outstanding; or (3) if the combined market value of all Shares issued and outstanding for the Up Trust and the Down Trust combined is less than \$1,000,000;
- if the intraday level of the Applicable Reference Price of Crude Oil is no longer calculated or available on at least a 15-second delayed basis during the time the Shares trade on the Amex from a source unaffiliated with the sponsor, custodian, depositor, Up Trading Trust, Down Trading Trust or the Exchange that is a major market data vendor;
- if the IIV of each Up Trading Share or Down Trading Share, as the case may be, is no longer made available on at least a 15-second delayed basis by a major market data vendor during the time the shares trade on the Exchange;
- if a replacement benchmark is selected for the determination of the Applicable Reference Price of Crude Oil, unless the Exchange files with the Commission a related proposed rule change pursuant to Rule 19b-4 under the Act seeking

approval to continue trading the Up MacroShares or Down MacroShares and such rule change is approved by the Commission; or

- if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

e. Trading Halts

Prior to the commencement of trading, the Exchange will issue an Information Circular (described below) to members informing them of, among other things, Exchange policies regarding halts in trading of the Shares. First, the Information Circular (described below) will advise that trading will be halted in the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached. In exercising its discretion to halt or suspend trading in the Shares, the Exchange may also consider other relevant factors and the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market. During any trading halt in the Shares, the underlying light sweet crude oil futures contracts are expected to continue to trade on the NYMEX because the NYMEX does not provide for trading halts in these contracts.

In the event that (a) the underlying value of each Trust or the per-Share underlying values of each of the Up Trading Shares or the Down Trading Shares are not disseminated daily to all market participants at the same time, (b) the IIV, updated at least every fifteen (15) seconds, for the underlying value per Share of the Up Trading Shares or the Down Trading Shares is no longer being calculated or disseminated by a major market data vendor during the time the Shares trade on the Amex, or (c) the price of the NYMEX light sweet crude oil futures contract is no longer available at least every 15 seconds from a major market data vendor during the time

the Shares trade on the Amex<sup>19</sup> (e.g., due to a temporary disruption in connection with either the pricing of the light sweet crude oil futures contract on the NYMEX or the transmission of real time price data from the NYMEX), then the Exchange will halt trading.<sup>20</sup> However, in the case of (b) or (c) involving interruption to the required dissemination of IIVs or futures contract prices, the Exchange may consider relevant factors and exercise its discretion regarding the halt or suspension of trading during the day in which the interruption to the dissemination of the IIVs or the futures contract prices occurs. If the interruption to the dissemination of the IIVs or the futures contract prices persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

f. Trading Rules

The Shares are equity securities subject to Amex Rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities and account opening and customer suitability (Amex Rule 411). The Shares will trade on the Amex from 9:30 a.m. until either 4:00 p.m. or 4:15 p.m. Eastern Time each business day for each series, as specified by the Exchange, and will trade in a minimum price variation of \$0.01 pursuant to Amex Rule 127–AEMI. Trading rules pertaining to odd-lot trading in Amex equities (Amex Rule 205–AEMI) will also apply.

Amex Rule 154–AEMI(c)(ii) provides that stop and stop limit orders to buy or sell a security the price of which is derivatively priced based upon another security or index of

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<sup>19</sup> Trading in the MACRO Tradeable Shares will not be halted on the Amex, however, simply because price data from the NYMEX based on current trading is not available outside the normal open outcry trading hours of light sweet crude oil futures contracts on the NYMEX from 10:00 a.m. to 2:30 p.m., Eastern Time.

<sup>20</sup> In each of these circumstances, the Exchange may contact the Commission staff to discuss the matter.

securities, may be elected by a quotation, as set forth in subparagraphs (c)(ii)(1)-(4) of Amex Rule 154–AEMI . By this rule filing, the Exchange is designating the Shares as eligible for this treatment.<sup>21</sup> In addition, Amex Rule 126A–AEMI complies with Rule 611 of Regulation NMS, which requires, among other things, that the Exchange adopt and enforce written policies and procedures that are reasonably designed to prevent trade-throughs of protected quotations. Members and member organizations will be subject to Commentary .03 to Amex Rule 1400 prohibiting such member or member organizations from entering into the Exchange’s order routing system multiple limit orders as agent (i.e., customer agency orders).

g. Information Circular

Prior to the commencement of trading, the Exchange will inform its members and member organizations in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) what the Shares are; (2) the procedures for purchases and paired optional redemptions of Shares, which may only be effected in MacroShares Units or multiples thereof by Authorized Participants (noting in particular that Shares are not individually redeemable); (3)

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<sup>21</sup> See Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) (SR-Amex-90-31) at note 9, regarding the Exchange’s designation of equity derivative securities as eligible for such treatment by means of a new rule filing with the Commission. In the instant case, the price of the Up MacroShares and the Down MacroShares are derivatively based upon, and should fluctuate with, the value of the underlying settlement contracts held by the Up Trust or the Down Trust, as the case may be, which settlement contracts: (1) determine the amount of the aggregate assets in the paired Trusts to which each respective Trust would be entitled if settlement occurred on that day; and (2) have a value that is determined by the level of the Applicable Reference Price of Crude Oil. Consequently, as with other equity derivative securities designated by the Exchange as eligible under the terms of Securities Exchange Act Release No. 29063 to allow stop and stop limit orders to be elected by a quotation, the Exchange believes that the derivative pricing relationship to which the Shares are subject does not present the type of opportunity for manipulation and trading abuses in connection with elections of stop orders by specialists that the Commission seeks to prohibit.

prospectus delivery requirements that are applicable in connection with the purchase of newly issued Shares by investors; (4) applicable Amex rules; (5) dissemination of information regarding the underlying value of each Trust and the share of that underlying value allocable to one Up MacroShare and one Down MacroShare; (6) trading information; and (7) suitability obligations of members with respect to recommended transactions to customers in the Shares (see below).

In addition, the Information Circular will reference that the Shares are subject to various fees and expenses described in the Registration Statement on Form S-1 for the Up MacroShares or the Down MacroShares, as applicable.<sup>22</sup> The Information Circular will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. It will also reference the fact that the Commission has no jurisdiction over the trading of the NYMEX light sweet crude oil futures contract. Finally, the Information Circular will also advise members that the upside gains to investors are capped once the price level percentage change of the Applicable Reference Price of Crude Oil equals or exceeds 100%.

h. Suitability

The Exchange, in the Information Circular referenced above, will inform members and member organizations of the characteristics of the Trusts and the Shares and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

The Exchange notes that pursuant to Amex Rule 411, members and member organizations are required in connection with recommending transactions in the Shares to have a reasonable basis to believe that a customer is suitable for the particular investment given

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<sup>22</sup> See supra note 4.

reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member.

i. Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares and to deter and detect violations of Exchange rules and applicable federal securities laws.<sup>23</sup> Specifically, the Amex will rely on its existing surveillance procedures applicable to derivative securities products, including Paired Trust Shares, to monitor trading in the Shares. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Exchange currently has in place a comprehensive surveillance sharing agreement with the NYMEX for the purpose of providing information in connection with trading in, or related to, futures contracts traded on the NYMEX that will serve as the Applicable Reference Price of Crude Oil. This agreement supports the surveillance responsibilities of the two exchanges, including monitoring for fraudulent and manipulative practices in the trading of the Shares. The Exchange also notes that NYMEX is a member of the Intermarket Surveillance Group (“ISG”) and a signatory to the existing ISG Agreement, as is the Amex. Pursuant to the ISG Agreement, NYMEX has the obligation to provide relevant surveillance information in response to a request from Amex.<sup>24</sup>

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<sup>23</sup> See May 30 Email supra note 17.

<sup>24</sup> See id.



## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>25</sup> that a national securities exchange have rules that are 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, 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 Exchange believes that the proposed rule amendments will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in the proposed rules are intended to protect investors and the public interest.

### 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

Written comments on the proposed rule change were neither solicited nor received.

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

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 such proposed rule change, or

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<sup>25</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

#### 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-Amex-2008-36 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-Amex-2008-36. 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 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-Amex-2008-36 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

Florence E. Harmon  
Acting Secretary

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<sup>26</sup> 17 CFR 200.30-3(a)(12).