

necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes 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-NYSE-2008-94 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-NYSE-2008-94. 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 NYSE. 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-NYSE-2008-94 and should be submitted on or before October 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-23837 Filed 10-7-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58713; File No. SR-NYSE-2008-96]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Extend for Three Months the Moratorium Related to the Qualification and Registration of Registered Competitive Market Makers ("RCMMs") Pursuant to NYSE Rule 107A and Competitive Traders ("CTs") Pursuant to NYSE Rule 110

October 2, 2008.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 30, 2008, New York Stock Exchange LLC ("NYSE" 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 self-regulatory organization. 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 extend for three months the moratorium related to the qualification and registration of Registered Competitive Market Makers ("RCMMs") pursuant to NYSE Rule 107A and Competitive Traders ("CTs") pursuant to NYSE Rule 110. The text of the proposed rule change is available at <http://www.nyse.com>, the NYSE, and 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 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 extend for three months the moratorium related to the qualification and registration of RCMMs pursuant to NYSE Rule 107A and CTs pursuant to NYSE Rule 110.

On September 22, 2005, the Exchange filed SR-NYSE-2005-63<sup>4</sup> with the Securities and Exchange Commission ("Commission") proposing to implement a moratorium on the qualification and registration of new RCMMs and CTs ("Moratorium"). The purpose of the Moratorium was to allow the Exchange an opportunity to review the viability of RCMMs and CTs in the NYSE HYBRID MARKET<sup>SM</sup> ("Hybrid Market").<sup>5</sup>

During each phase of the Hybrid Market, new system functionality was included in the operation of Exchange systems and new data was generated. As a result, the Exchange was unable to make an informed decision as to the viability of RCMMs and CTs in the Hybrid Market. The phasing in implementation of the Hybrid Market required the Exchange to extend the Moratorium an additional seven times over the next twenty-seven (27) months.<sup>6</sup>

On June 12, 2008, the Exchange filed its proposal to create its new market model ("New Model").<sup>7</sup> Pursuant to its filing, the Exchange proposed to: (i)

<sup>4</sup> See Securities Exchange Act Release No. 52648 (October 21, 2005), 70 FR 62155 (October 28, 2005) (SR-NYSE-2005-63).

<sup>5</sup> See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR-NYSE-2004-05) (establishing the NYSE HYBRID MARKET<sup>SM</sup>).

<sup>6</sup> See Securities Exchange Act Release Numbers 54140 (July 13, 2006), 71 FR 41491 (July 21, 2006) (SR-NYSE-2006-48); 54985 (December 21, 2006), 72 FR 171 (January 3, 2007) (SR-NYSE-2006-113); 55992 (June 29, 2007), 72 FR 37289 (July 9, 2007) (SR-NYSE-2007-57); 56556 (September 27, 2007), 72 FR 56421 (October 3, 2007) (SR-NYSE-2007-86); 57072 (December 31, 2007), 73 FR 1252 (January 7, 2008) (SR-NYSE-2007-125); 57601 (April 2, 2008), 73 FR 19123 (April 8, 2008) (SR-NYSE-2008-22); 58033 (June 26, 2008), 73 FR 38265 (July 3, 2008) (SR-NYSE-2008-49).

<sup>7</sup> See Securities Exchange Act Release No. 58184 (July 17, 2008, 2006), 73 FR 42853 (July 23, 2008) (SR-NYSE-2008-46).

<sup>22</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.

Provide market participants with additional abilities to post hidden liquidity on Exchange systems; (ii) create a Designated Market Maker ("DMM"), and phase out the NYSE specialist; and (iii) enhance the speed of execution through technological enhancements and a reduction in message traffic between Exchange systems and its DMMs. In light of this proposed New Model, the Exchange requested an extension of the Moratorium to evaluate the viability of the RCMMs and CTs in the proposed New Model.<sup>8</sup>

In light of these proposed changes, the Exchange seeks to continue its review of the data related to RCMMs and CTs current trading on the NYSE pending approval of the New Model.

Accordingly, the Exchange requests additional time to decide what roles, if any, RCMMs and CTs should perform in the proposed New Model. The Exchange is proposing to extend the Moratorium as amended<sup>9</sup> for an additional three (3) months to December 31, 2008 in order to finalize its determination as to the roles of RCMMs and CTs and to formally submit a proposal to the Commission outlining the role, if any, these classes of traders have in the Exchange's evolving market.

The Exchange will issue an Information Memo announcing the extension of the Moratorium.

## 2. Statutory Basis

The basis under the Act<sup>10</sup> for this proposed rule change is the requirement under Section 6(b)(5)<sup>11</sup> that an exchange have rules that are designed to promote just and equitable principles of trade, 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 is currently reviewing the data related to RCMMs and CTs to evaluate its trading volume in the current more electronic market. Since it is undergoing significant developments in its technology and its market model, the Exchange believes that an extension of time to finalize its determination of what, if any, roles the RCMMs and CTs will play in this evolving marketplace could potentially remove impediments

to and better improve the mechanism of a free and open market.

### 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

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the 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>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>14</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>15</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Moratorium to continue without interruption so that the Exchange may have additional time to make a final determination as to the future roles of RCMMs and CTs in the proposed New

Model and to file with the Commission a proposed rule change outlining such roles. For these reasons, the Commission designates that the proposed rule change become operative immediately.<sup>16</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.

### 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-NYSE-2008-96 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-NYSE-2008-96. 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

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission 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 requested that the Commission waive the 5-day pre-filing notice requirement. The Exchange has satisfied this requirement.

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

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>8</sup> See Securities Exchange Act Release No. 58033 (June 26, 2008), 73 FR 38265 (July 3, 2008) (SR-NYSE-2008-49).

<sup>9</sup> See Securities Exchange Act Release No. 53549 (March 24, 2006), 71 FR 16388 (March 31, 2006) (SR-NYSE-2006-11) (making certain amendments to the Moratorium).

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-NYSE-2008-96 and should be submitted on or before October 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**  
Acting Secretary.

[FR Doc. E8-23843 Filed 10-7-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58704; File No. SR-  
NYSEArca-2008-92]

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

October 1, 2008.

On August 25, 2008, 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 list and trade shares of the MacroShares Major Metro Housing Up Trust ("Up Trust") and the MacroShares Major Metro Housing Down Trust ("Down Trust") (collectively, the "Trusts").<sup>3</sup> The proposed rule change was published in the **Federal Register** on September 15, 2008 for a 15-day comment period.<sup>4</sup> 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 Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.400, which governs the

listing of Paired Trust Shares.<sup>5</sup> The Shares will satisfy the initial and continued listing criteria applicable to Paired Trust Shares, which are set forth in NYSE Arca Equities Rule 8.400(d).<sup>6</sup>

#### Description of the Trusts and the Shares

The Up MacroShares and the Down MacroShares will be offered by the Up Trust and the Down Trust, respectively, established by MACRO Inflation 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>7</sup> Distributions from the Trusts 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 S&P/Case-Shiller Composite-10 Home Price Index is referred to as the "Reference Value of the Index" or "Reference Value" (as defined in the Notice). The S&P/Case-Shiller Home Price Indices measure the change in home prices in one or several geographic regions of the United States. They are calculated monthly and are publicly available for 20 major metropolitan areas.<sup>8</sup>

Additional information regarding the Shares may be found in the Notice,<sup>9</sup> including but not limited to discussions of the Shares and Trusts, the Reference Value of the Index, the S&P/Case-Shiller Home Price Indices and the Index, the

<sup>5</sup> The Shares are "Trading Shares" as defined in NYSE Arca Equities Rule 8.400(b)(1)(B).

<sup>6</sup> See e-mail from Michael Cavalier, Associate General Counsel, NYSE Euronext, to Christopher Chow, Senior Counsel, Commission, dated September 26, 2008.

<sup>7</sup> The Shares are being offered by the Trusts under the Securities Act of 1933, as amended, 15 U.S.C. 77a. On August 6, 2008, the depositor filed with the Commission Registration Statements on Form S-1 (Amendment No. 1) for the Up MacroShares (File No. 333-151522) ("Up Trust Registration Statement") and for the Down MacroShares (File No. 333-151523) ("Down Trust Registration Statement," and, together with the Up Trust Registration Statement, "Registration Statements"). Descriptions herein relating to the operation of the Trusts and the S&P/Case-Shiller Home Price Indices are based on the Registration Statements. Additionally, unless otherwise stated herein, defined terms have same meaning set forth in the Registration Statements.

<sup>8</sup> The S&P/Case-Shiller Composite-10 Home Price Index is a weighted average of the following 10 S&P/Case-Shiller Metro Area Home Price Indices: The S&P/Case-Shiller Boston Home Price Index, the S&P/Case-Shiller Chicago Home Price Index, the S&P/Case-Shiller Denver Home Price Index, the S&P/Case-Shiller Las Vegas Home Price Index, the S&P/Case-Shiller Los Angeles Home Price Index, the S&P/Case-Shiller Miami Home Price Index, the S&P/Case-Shiller New York City Area Home Price Index, the S&P/Case-Shiller San Diego Home Price Index, the S&P/Case-Shiller San Francisco Home Price Index, and the S&P/Case-Shiller Washington, D.C. Home Price Index.

<sup>9</sup> See *supra* note 4.

eligibility criteria, the MSA Index construction, the weighting of sales pairs, the Index governance, the Termination Triggers, the calculation of the Underlying Value, the availability of information, the initial and continued listing criteria, trading halts, trading rules, surveillance, and the Information Bulletin.

#### 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 promote just and equitable principles of trade, 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, for the Shares to be listed and traded on the Exchange, such Shares must be in compliance with the initial and continued listing requirements under NYSE Arca Equities Rule 8.400.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>13</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the CTA high-speed line. The Exchange further states that information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day via electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of major newspapers and will be available from major market data vendors.

The current Index level is available through major market data vendors (*e.g.*,

<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).

<sup>13</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>17</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> Shares of the Up Trust and the Down Trust are referred to collectively as "Shares."

<sup>4</sup> See Securities Exchange Act Release No. 58469 (September 5, 2008), 73 FR 53306 ("Notice").