

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 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>

<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> 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

### 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.

### 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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59665; File No. SR-NYSEAmex-2009-05]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Equities Rule 48.10 To Extend the Temporary Provisions of the Rule Relating to the Ability of the Exchange To Declare an Extreme Market Volatility Condition and Suspend Certain Exchange Requirements Relating to the Closing of Securities at the Exchange

March 31, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> 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 March 23, 2009, NYSE Amex LLC<sup>4</sup> (the

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

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

<sup>17</sup> *Id.*

<sup>18</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> See e-mail from Clare F. Saperstein, Managing Director, Office of General Counsel, NYSE Regulation, Inc., to David Liu, Assistant Director, Commission, dated March 31, 2009.

"Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder,<sup>6</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 proposes to amend Equities Rule 48.10 to extend the temporary provisions of the rule relating to the ability of the Exchange to declare an extreme market volatility condition and suspend certain Exchange requirements relating to the closing of securities at the Exchange. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

### 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 amend NYSE Amex Equities Rule 48.10 to temporarily extend the provisions of the rule relating to declaring an extreme market volatility condition at the close.<sup>7</sup>

On November 26, 2008, NYSE Amex filed a rule proposal to conform its rules to those of the New York Stock

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>7</sup> See SR-NYSE-2009-35 (formally submitted on March 23, 2009).

Exchange LLC ("NYSE").<sup>8</sup> Among the rules amended in that filing was Rule 48, which was previously amended by the NYSE. On October 2, 2008, the NYSE filed for immediate effectiveness to amend NYSE Rule 48 to provide the NYSE with the ability to suspend certain rules at the close when extremely high market volatility could negatively affect the ability to ensure a fair and orderly close.<sup>9</sup> The NYSE amended Rule 48 on an immediate effectiveness basis in order to respond swiftly to market conditions at that time. Those amendments were adopted on a temporary basis with the understanding that if the NYSE would like to adopt the closing provisions on a permanent basis, such proposal must be filed for notice and comment.

The Exchange has filed a rule proposal to amend NYSE Amex Equities Rules 48 and 123C to delete from Rule 48 the provisions relating to declaring an extreme market volatility condition at the close and add them in modified form to Rule 123C (the "Rule 48/123C filing").<sup>10</sup> That rule proposal has been filed under Section 19(b)(2) of the Securities Exchange Act of 1934 (the "Act")<sup>11</sup> and has been noticed for public comment. The comment period for that filing ends on March 31, 2009. In anticipation of the Rule 48/123C filing, the Exchange previously amended Rule 48.10 to extend from December 31, 2009 to March 27, 2009 the temporary time period that the Rule 48 at-the-close provisions would be in effect.<sup>12</sup> The Exchange now proposes to temporarily extend the NYSE Amex Equities Rule 48 at-the-close provisions pending the outcome of the Rule 48/123C filing. Accordingly, the Exchange proposes to amend Rule 48.10 to provide that the provisions of that rule relating to declaring an extreme market volatility condition at the close will end April 30, 2009.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>13</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. In particular, this rule proposal will permit the temporary provisions of Rule 48 to continue without interruption pending the outcome of the Rule 48/123C filing.

### 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 foregoing 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) By its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

The Exchange has requested that the Commission waive the 30-day operative delay in order to permit the temporary provisions of NYSE Amex Equities Rule 48 to continue without interruption pending the outcome of the Rule 48/123C filing. The Commission believes such waiver is consistent with the protection of investors and the public interest.<sup>16</sup> Accordingly, the Commission

designates the proposed rule change operative upon filing with the Commission.

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.

## 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-NYSEAmex-2009-05 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-NYSEAmex-2009-05. 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 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;

efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> See Securities Exchange Act Release No. 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR-NYSEALTR-2008-10).

<sup>9</sup> See SEC Release No. 58743 (Oct. 7, 2008), 73 FR 60742 (Oct. 14, 2008) (SR-NYSE-2008-102).

<sup>10</sup> See SEC Release No. 59488 (Mar. 3, 2009), 74 FR 10334 (Mar. 10, 2009) (SR-NYSEALTR-2009-15). The NYSE has filed a companion rule filing. See SEC Release No. 59489 (Mar. 3, 2009), 74 FR 10330 (Mar. 10, 2009) (SR-NYSE-2009-18).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> See SEC Release No. 59169 (Dec. 29, 2008), 74 FR 485 (Jan. 6, 2009) (SR-NYSEALTR-2008-18). The NYSE also filed a companion rule filing. See SEC Release No. 59168 (Dec. 29, 2008), 74 FR 483 (Jan. 6, 2009) (SR-NYSE-2008-139).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to 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 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

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–NYSEAmex–2009–05 and should be submitted on or before April 28, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–7732 Filed 4–6–09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59672; File No. SR–FINRA–2009–013]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend the Tolling Provisions in Rules 12206 and 13206 of the Codes of Arbitration Procedure for Customer and Industry Disputes

April 1, 2009.

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 Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) on March 11, 2009, the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. 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

FINRA Dispute Resolution is proposing to amend the tolling provisions in Rules 12206 and 13206 of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and for Industry Disputes (“Industry Code”), respectively, to clarify that the rules toll the applicable statutes of limitation when a person files an arbitration claim with FINRA.

Below is the text of the proposed rule change. Proposed deletions are in brackets.

\* \* \* \* \*

#### 12206. Time Limits

(a)–(b) No change.

(c) Effect of Rule on Time Limits for Filing Claim in Court

The rule does not extend applicable statutes of limitations; nor shall the six-year time limit on the submission of claims apply to any claim that is directed to arbitration by a court of competent jurisdiction upon request of a member or associated person. However, [where permitted by applicable law,] when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while FINRA retains jurisdiction of the claim.

(d) No change.

\* \* \* \* \*

#### 13206. Time Limits

(a)–(b) No change.

(c) Effect of Rule on Time Limits for Filing Claim in Court

The rule does not extend applicable statutes of limitations; nor shall the six-year time limit on the submission of claims apply to any claim that is directed to arbitration by a court of competent jurisdiction upon request of a member or associated person. However, [where permitted by applicable law,] when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while FINRA retains jurisdiction of the claim.

(d) No change.

\* \* \* \* \*

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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

Currently, Rule 12206, the “eligibility rule,” provides that, “no claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim.”<sup>3</sup> The eligibility rule does not extend applicable statutes of limitation, but Rule 12206(c) does provide that, “where permitted by applicable law, when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while FINRA retains jurisdiction of the claim.”<sup>4</sup> This means that, where permitted by applicable law, state statutes of limitation will be tolled (*i.e.*, temporarily suspended) when a person files an arbitration claim with FINRA.

For many years, FINRA has interpreted the rule to mean that any applicable statutes of limitation would be tolled in all cases when a person files an arbitration claim with FINRA. In *Friedman v. Wheat First Securities, Inc.*, however, the court found that the phrase “where permitted by applicable law,” means that State or Federal law, as applicable, must permit tolling expressly, or the period will not be tolled.<sup>5</sup> In light of the court’s interpretation of the phrase and the negative effect it could have on investors’ arbitration claims, FINRA is proposing to remove the phrase, “where permitted by applicable law,” from Rules 12206(c) and 13206(c) to make tolling automatic as part of the arbitration agreement.

The *Friedman* court granted the defendant’s request to dismiss the plaintiff’s complaint on statute of limitations grounds. In arguing against dismissal, the plaintiff sought to rely on old Rule 10307(a)<sup>6</sup> of the Code of

<sup>3</sup> FINRA describes the eligibility rule using the rule number from the Customer Code for simplicity. However, the proposal also applies to the identical eligibility rule of the Industry Code. See Rule 13206.

<sup>4</sup> See also Rule 13206(c) of the Industry Code.

<sup>5</sup> 64 F. Supp. 2d 338 (S.D.N.Y. 1999). The case involved claims under Section 10(b) of the Securities Exchange Act of 1934.

<sup>6</sup> Rule 10307(a) (Tolling of Time Limitation(s) for the Institution of Legal Proceedings and Extension of Time Limitation(s) for Submission to Arbitration) states in relevant part that:

Where permitted by applicable law, the time limitations which would otherwise run or accrue for the institution of legal proceedings shall be tolled where a duly executed Submission Agreement is filed by the Claimant(s). The tolling shall continue for such period as the Association shall retain jurisdiction upon the matter submitted.

<sup>17</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.