

are a significant alternative to the exchange's market data product.<sup>33</sup>

For more specific information concerning depth, market participants can choose among products offered by the various exchanges and ECNs.<sup>34</sup> The various self-regulatory organizations, the several Trade Reporting Facilities of FINRA, and ECNs that produce proprietary data are all sources of competition. In addition, market participants can assess depth with tools other than market data, such as "pinging" orders that search out both displayed and nondisplayed size at all price points within an order's limit price.<sup>35</sup>

In sum, there are a variety of alternative sources of information that impose significant competitive pressures on the NYSE in setting the terms for distributing its depth-of-book order data. The Commission believes that the availability of those alternatives, as well as the NYSE's compelling need to attract order flow, imposed significant competitive pressure on the NYSE to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because the NYSE was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. Neither commenter raised concerns with regard to a substantial countervailing basis that the terms of the proposal failed to meet the requirements of the Act or the rules thereunder. Further, an analysis of the proposal does not provide such a basis.

The Exchange proposes to switch from a per-device fee to a Subscriber Entitlement fee. The Exchange is also proposing to introduce a nonprofessional Subscriber Fee that is subject to a monthly maximum amount. This change will lower the fees payable for NYSE OpenBook data for nonprofessional Subscribers from \$60 per month to \$15 per month per individual and device. The commenters supported NYSE's changes to its market data fee structure. SIFMA believes that the unit of count pilot holds the promise of simplified and fairer market data fee administration that would avoid duplicate counting of an individual using multiple devices.<sup>36</sup> Schwab stated that the changes in how users are of data

are counted will make the market data billing process more efficient and reduce administrative burdens.<sup>37</sup> Schwab stated that the proposal would for the first-time allow retail customers obtain affordable depth-of-book market data.<sup>38</sup> The Commission believes that this proposed rule change will provide vendors with the flexibility to manage NYSE market data in a manner that they determine is most useful and efficient to their business operations.<sup>39</sup> In addition, the overall reduction in costs for NYSE OpenBook could lead to a wider distribution of the market data and greater market transparency.<sup>40</sup>

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>41</sup> that the proposed rule change (SR-NYSE-2008-131) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>42</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59542; File No. SR-NYSEArca-2009-14]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Leverage Factor Applicable to the MacroShares Major Metro Housing Trusts

March 9, 2008.

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 3, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The

<sup>37</sup> Schwab Letter at 2.

<sup>38</sup> Schwab Letter at 1.

<sup>39</sup> See Schwab Letter at 2 ("[T]he proposal will allow [Vendors] to manipulate the data as we choose and to aggregate this data with data from other exchanges to offer innovative market data displays to our customers.").

<sup>40</sup> See SIFMA Letter at 3 ("SIFMA has long advocated a nonprofessional fee for depth-of-book data to promote market transparency and investor protection").

<sup>41</sup> 15 U.S.C. 78s(b)(2).

<sup>42</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.

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

Pursuant to the provisions of Section 19(b)(1) of the Act,<sup>4</sup> the Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities" or the "Corporation") proposes to modify the representation made in SR-NYSEArca-2008-92 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. The shares of the Up Trust are referred to as the Up MacroShares, and the shares of the Down Trust are referred to as the Down MacroShares (collectively, the "Shares"). The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Public Reference Room of the Commission.

### 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Commission has 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 under NYSE Arca Equities Rule 8.400.<sup>5</sup> As described in the Approval Order and Notice, the Up

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> See Securities Exchange Act Release Nos. 58704 (October 1, 2008), 73 FR 59026 (October 8, 2008) (order approving listing and trading on the Exchange of the Trusts ("Approval Order")); 58469

<sup>33</sup> *Id.*

<sup>34</sup> See NYSE Arca Order at 74784.

<sup>35</sup> *Id.*

<sup>36</sup> SIFMA Letter at 2.

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 assets of the Down Trust will consist of an income distribution agreement and settlement contracts entered into with the Up Trust. Similarly, the assets of the Up Trust will consist of an income distribution agreement and settlement contracts entered into with the Down Trust.<sup>6</sup> Each Trust will also hold U.S. Treasuries, repurchase agreements on U.S. Treasuries and cash to secure its obligations under the income distribution agreement and the settlement contracts. The trustee for the Trusts is State Street Bank and Trust Company.

As described in the Notice, the Trusts will make quarterly distributions of net income, if any, on the treasuries and a final distribution of all assets they hold on deposit on the final scheduled termination date, an early termination date or a redemption date. Each quarterly and final distribution 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 discussed in the Notice.<sup>7</sup>

If the Reference Value rises above its specified starting level, the Up Trust's Underlying Value (as described in the 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 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.

Thus, an increase in the Reference Value of the Index results in a proportionate decrease in the Underlying Value of the Down Trust, multiplied by the leverage factor. A decrease in the Reference Value of the Index results in a proportionate increase in the Underlying Value of the Down Trust, multiplied by the leverage factor.

The 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. This would make the per share Underlying Value and the market price of Up MacroShares and Down MacroShares more volatile than the housing prices which those shares reference.

With the exception of U.S. Treasuries, repurchase agreements on U.S. Treasuries and cash, the Trusts will not hold assets (e.g., common stocks, swaps or options) upon which payment to investors is based. Rather, the portion of Trust assets due from one Trust to another changes as a result of changes to the Reference Value. This amount will be multiplied by the leverage factor of 3, but applying the leverage factor does not otherwise affect the assets held by the Trusts or the value of the Index.

Additional information relating to the Trusts and Shares is available in the Registration Statements, the Notice and the Approval Order.<sup>9</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>10</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>11</sup> in particular in that it is 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,

and, in general, to protect investors and the public interest. The Exchange believes that the proposal 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 NYSE Arca Equities Rule 8.400 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

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

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.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register**. 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

(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 ("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"). The descriptions herein relating to the operation of the Trusts is based on the Registration Statements.

<sup>6</sup> The income distribution agreement and applicable settlement contracts are attached as exhibits to the Registration Statements.

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

<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, all representations made by the Exchange in the Notice continue to apply.

<sup>9</sup> See note 5, *supra*.

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

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

- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-NYSEArca-2009-14 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-NYSEArca-2009-14. 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 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-2009-14 and should be submitted on or before March 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E9-5568 Filed 3-13-09; 8:45 am]

**BILLING CODE 8011-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[Docket No. FHWA-2009-0027]

#### Request for Renewal of Currently Approved Information Collection: Certification of Enforcement of Vehicle Size and Weight Laws

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Please submit comments by May 15, 2009.

**ADDRESSES:** You may submit comments identified by DOT Docket ID Number FHWA-2009-0027 by any of the following methods:

*Web Site:* For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Fax:* 1-202-493-2251.

*Mail:* Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

*Hand Delivery or Courier:* U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** John Nicholas (202 366-2317), Department of Transportation, Federal Highway Administration, Office of Freight Management and Operations, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

*Title:* Certification of Enforcement of Vehicle Size and Weight Laws.

*Background:* Title 23, U.S.C., section 141, requires each State, the District of Columbia and Puerto Rico to file an annual certification that they are enforcing their size and weight laws on Federal-aid highways and that their Interstate System weight limits are

consistent with Federal requirements to be eligible to receive an apportionment of Federal highway trust funds. Section 141 also authorizes the Secretary to require States to file such information as is necessary to verify that their certifications are accurate. To determine whether States are adequately enforcing their size and weight limits, each must submit an updated plan for enforcing their size and weight limits to the FHWA at the beginning of each fiscal year. At the end of the fiscal year, they must submit their certifications and sufficient information to verify that their enforcement goals established in the plan have been met. Failure of a State to file a certification, adequately enforce its size and weight laws and enforce weight laws on the Interstate System that are consistent with Federal requirements, could result in a specified reduction of its Federal highway fund apportionment for the next fiscal year. In addition, section 123 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599, 92 Stat. 2689, 2701) requires each jurisdiction to inventory (1) its penalties for violation of its size and weight laws, and (2) the term and cost of its oversize and overweight permits.

*Respondents:* The State Departments of Transportation (or equivalent) in the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

*Frequency:* Twice annually.

*Estimated Average Burden per Response:* Each response will take approximately 40 hours.

*Estimated Total Annual Burden Hours:* The estimated total annual burden for all respondents is 4,160 hours.

**Public Comments Invited:** You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

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