

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59660; File No. SR-NYSEAmex-2009-03]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Deleting Rule 936C, Cancellation and Adjustment of Index Option Transactions

March 31, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on March 20, 2009, NYSE Amex LLC ("NYSE Amex" 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 Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</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 delete Rule 936C governing the Cancellation and Adjustment of Index Options Contracts. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at 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 recently received approval of SR-NYSEALTR-2008-14,<sup>5</sup> which proposed new Rule Section 900NY for the trading of options contracts, and also filed as immediately effective SR-NYSEALTR-2009-17,<sup>6</sup> which deleted certain rules that were no longer relevant or were superseded by Rules in Section 900NY.

SR-NYSEALTR-2009-17 inadvertently omitted deleting Rule 936C, Cancellation and Adjustment of Index Options Contracts, which has been replaced by Rule 975NY, Obvious Errors and Catastrophic Errors. Rule 975NY governs Obvious Errors and Catastrophic Errors in all options products, including options on indexes, exchange-traded funds, and trust issued receipts.

##### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>8</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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

#### 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 does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) 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>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

The Exchange has requested that the Commission waive the 30-day operative delay to the extent that such action is necessary to clarify the applicable rule in cases of Obvious Errors and Catastrophic Errors involving options on indexes, exchange-traded funds, and trust issued receipts. The Commission hereby grants the Exchange's request.<sup>11</sup> The Commission believes that such action is consistent with the protection of investors and the public interest because the Exchange is merely deleting an obsolete rule.

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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</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>11</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. See 15 U.S.C. 78c(f).

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

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

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

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

<sup>5</sup> See Exchange Act Release No. 34-59472 (February 27, 2009), 74 FR 9843.

<sup>6</sup> See Exchange Act Release No. 34-59454 (February 25, 2009), 74 FR 9461.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

Number SR-NYSEAmex-2009-03 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-2009-03. 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; 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-2009-03 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>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59678; File No. SR-NYSEArca-2009-14]

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

April 1, 2009.

On March 3, 2009, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify the representation made in SR-NYSEArca-2008-92<sup>3</sup> regarding the leverage factor applicable to the MacroShares Major Metro Housing Up Trust ("Up Trust") and the MacroShares Major Metro Housing Down Trust ("Down Trust") (collectively, the "Trusts") and, specifically, to indicate that the leverage factor to be applied will be 3 rather than 2.<sup>4</sup> The proposed rule change was published in the **Federal Register** on March 16, 2009 for a 15-day comment period.<sup>5</sup> The Commission received no comments on the proposal. This order grants approval to the proposed rule change on an accelerated basis.

#### I. Description of the Proposal

The Commission previously approved, pursuant to Section 19(b)(2) of the Act, the Exchange's proposal to list and trade the Up MacroShares and the Down MacroShares as Paired Trust Shares under NYSE Arca Equities Rule 8.400.<sup>6</sup>

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

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

<sup>3</sup> See Securities Exchange Act Release No. 58704 (October 1, 2008), 73 FR 59026 (October 8, 2008) (order approving listing and trading on the Exchange of the Trusts ("Approval Order")); See also Securities Exchange Act Release No. 58469 (September 5, 2008), 73 FR 53306 (September 15, 2008) (SR-NYSEArca-2008-92) (notice of proposed rule change to list and trade the Trusts on the Exchange) ("Initial Notice"). The Shares are being offered by the Trusts under the Securities Act of 1933, 15 U.S.C. 77a. On February 17, 2009, the depositor filed with the Commission preliminary Registration Statements on Form S-1 (Amendment No. 3) for the Up MacroShares (File No. 333-151522) and for the Down MacroShares (File No. 333-151523) ("Registration Statements").

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

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

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

As described in the Approval Order and the Initial Notice, the Up Trust and the Down Trust intend to issue Up MacroShares and Down MacroShares, respectively, on a continuous basis. The Up MacroShares and the Down MacroShares represent undivided beneficial interests in the Up Trust and the Down Trust, respectively.

The Trusts will make quarterly distributions and a final distribution that is based on the value of the S&P/Case-Shiller Composite-10 Home Price Index ("Index"), as well as on prevailing interest rates on U.S. Treasury obligations. The last published value of the S&P/Case-Shiller Composite-10 Home Price Index is referred to as the "Reference Value of the Index" or "Reference Value", as discussed in the Initial Notice.<sup>7</sup>

If the Reference Value rises above its specified starting level, the Up Trust's Underlying Value (as described in the Initial Notice) will increase to include all of its assets plus a portion of the assets of the paired Down Trust. This portion of assets due from the Down Trust will be multiplied by a specified "leverage factor." Conversely, if the level of the Reference Value of the Index falls below its starting level on and after the closing date, the Up Trust's Underlying Value will decrease, because a portion of its assets will be included in the Underlying Value of its paired Down Trust, such portion being multiplied by the leverage factor.

The Initial Notice stated that the leverage factor would be 2, as initially described in the Registration Statements. The Trusts now intend to utilize a leverage factor of 3.<sup>8</sup> The effect of this will be to triple any increase or decrease in the Underlying Value of the Up Trust or the Down Trust, depending upon whether there is an increase or decrease in the Reference Value of the Index.

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

#### II. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the

<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, the Exchange states that all representations made by the Exchange in the Initial Notice continue to apply. See Notice, *supra* note 5, 74 FR at 11168, n. 8.

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

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