

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58057; File No. SR-Amex-2008-36)

June 30, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval of Proposed Rule Change to List and Trade Shares of the MacroShares \$100 Oil Up Trust and the MacroShares \$100 Oil Down Trust

I. Introduction

On May 20, 2008, the American Stock Exchange LLC (“Amex” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to: (1) amend Amex Rules 1400, 1401, 1402 and 1405 relating to the trading of Paired Trust Shares; and (2) list and trade shares (“Shares”) of the MacroShares \$100 Oil Up Trust (“Up Trust”) and the MacroShares \$100 Oil Down Trust (“Down Trust”) (collectively, the “Trusts”). The proposed rule change was published for comment in the Federal Register on June 11, 2008 for a 15-day comment period.³ The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposal

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 shares of the Up Trust (“Up MacroShares” and shares of the Down Trust (“Down MacroShares”). In their current form,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57925 (June 5, 2008), 73 FR 33121 (“Notice”).

these rules apply to Paired Trust Shares that consist of Holding Shares and Tradeable Shares.⁴

A. Amendments to Amex Rules 1400, 1401, 1402 and 1405

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.⁵ Under the proposed amendments to Amex Rule 1400, the term “Paired Trust 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 1405.⁶ The Exchange represents that there are no substantive differences between the proposed Paired Trust Shares structure (i.e., a single set of Trading Trusts that issue Trading Shares and hold financial instruments) and the current two-tier structure (i.e., 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).

B. Listing and Trading the Shares

The Up MacroShares and the Down MacroShares represent undivided beneficial interests in the Up Trust and the Down Trust, respectively. The Up Trust and the Down Trust would issue

⁴ 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.

⁵ The Exchange states that it 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 as a result of a recent interpretation by the staff of the Internal Revenue Service relating to the inability to interpose a grantor trust to utilize a certain tax reporting form.

⁶ 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).

Up MacroShares and Down MacroShares, respectively, on a continuous basis on an ongoing basis at any time after the closing date only to and as directed by authorized participants, at the per-Share values of those Shares on the business day on which a creation order for the Shares is delivered to and accepted by the administrative agent for both Trusts.⁷ The Shares then may be sold by authorized participants to the public at the prevailing market price. As mentioned above, Amex proposes to list and trade the Shares pursuant to amended Amex Rules 1400, 1401, 1402 and 1405.

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 Oil⁸ 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 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

⁷ 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.

⁸ The Applicable Reference Price of Crude Oil 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.

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. 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.⁹ Each quarterly and final distribution will be based on the value of the Applicable Reference Price of Crude Oil.

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

⁹ 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.

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 Up Trust. The underlying value of the Down Trust on each price determination day represents 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 Notice and the Registration Statements contain more information regarding the Shares, the Trusts, the Applicable Reference Price of Crude Oil, quarterly distributions, final distributions, price determination days, underlying values, risks, fees and expenses, termination triggers, and creation and redemption procedures.

1. Availability of Information Regarding the Shares
 - a. Intraday Indicative Values

Throughout each price determination day, 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") of the values per-Share of both the Up MacroShares and the Down MacroShares. To enable this calculation, 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.

Because the NYMEX market for the light sweet crude oil futures contract will be closed for portions of 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.¹⁰ 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.

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.

b. Availability of Other Information and Data

At the end of each price determination day, Amex will calculate the premium or discount of the midpoint of the bid/offer for the Up MacroShares at the close on Amex relative to the value per share for that price determination day, after the latter is calculated and provided to Amex by the trustee. Amex will also perform the same calculation with respect to the Down MacroShares. 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, 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. 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.

¹⁰ The IIV calculated during the period following the daily opening of trading of the Shares on 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.

On each price determination day, State Street Bank and Trust Company, the trustee for the Up Trust and the Down Trust, will calculate the value of the Up Trust and the Down Trust and the per-Share values of the Up MacroShares and Down MacroShares, 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. 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.

2. Initial and Continued Listing Criteria

Amex Rule 1402 sets forth initial and continued listing criteria applicable to Paired Trust Shares. Currently, these criteria are applicable to Holding Shares and Tradeable Shares. 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 values per-Share of the Up MacroShares and Down MacroShares, 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 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 Commission 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.

3. 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 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 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 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 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 Amex¹¹ (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.¹² 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.

4. 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 Amex from 9:30 a.m. until either 4:00 p.m. or 4:15 p.m. Eastern Time each

¹¹ Trading in the MACRO Tradeable Shares will not be halted on 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.

¹² In each of these circumstances, the Exchange may contact the Commission staff to discuss the matter.

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 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.¹³ 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).

¹³ 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.

5. 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 Units¹⁴ or multiples thereof by Authorized Participants (noting in particular that Shares are not individually redeemable); (3) 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 (discussed below).

In addition, the Information Circular will reference that the Shares are subject to various fees and expenses described in the Registration Statements on Form S-1 for the Up MacroShares or the Down MacroShares, as applicable.¹⁵ 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

¹⁴ See supra note 7.

¹⁵ 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

percentage change of the Applicable Reference Price of Crude Oil equals or exceeds 100%.

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

7. 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. Specifically, 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

Trust Registration Statement” and together with the Up Trust Registration Statement, the “Registration Statements”).

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 Amex. Pursuant to the ISG Agreement, NYMEX has the obligation to provide relevant surveillance information in response to a request from Amex.

III. 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 Act¹⁶ and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁸ 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.

A. Amendments to Amex Rules 1400, 1401, 1402 and 1405

Amex Rule 1400 governs the listing and trading of Paired Trust Shares. The definition of Paired Trust Shares is currently limited to Holding Shares and Tradeable Shares.¹⁹ Amex proposes to broaden the definition of Paired Trust Shares to include Trading Shares. The structure of Trading Shares differs from the structures described under the current Amex Rules governing Paired Trust Shares in that, for Trading Shares, there are no Holding Trusts and there

¹⁶ 15 U.S.C. 78f.

¹⁷ 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).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ See current Amex Rule 1400(b)(1).

is only one set of trusts (i.e., the “Up Trust” and the “Down Trust”) instead of two. The Exchange has represented that there are no substantive differences in the new structure, which has been proposed because of a recent interpretation by the staff of the Internal Revenue Service that the two-tier Holding Shares and Tradeable Shares structure is no longer necessary.

The Commission finds that Amex’s proposal contains adequate rules and procedures to govern the listing and trading of Trading Shares on the Exchange. Previously, the Commission found that the current rules governing the listing and trading of Paired Trust Shares are consistent with Section 6(b)(5) of the Act.²⁰ Given the substantial similarities between the current and proposed types of Paired Trust Shares, the Commission believes that including Trading Shares within Amex’s existing regime for listing and trading Paired Trust Shares is appropriate and does not raise any regulatory issues.

The Commission believes that the proposal should help to facilitate the listing and trading of additional types of exchange-traded products that should enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the Commission believes that the listing and trading criteria for Trading Shares set forth in proposed Amex Rule 1400 are reasonably designed to protect investors and the public interest, as discussed herein.

B. Listing and Trading the Shares

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,²¹ 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

²⁰ See Securities Exchange Act Release No. 54839 (November 29, 2006), 71 FR 70804, 70809 (December 6, 2006) (SR-AMEX-2006-82).

²¹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

with respect to quotations for and transactions in securities. Amex will 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. The Exchange states that 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, and that the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Amex will also post the premium or discount of the midpoint of the bid/offer for the Up MacroShares and Down MacroShares at the close on Amex relative to the values per Share for that price determination day, together with the end-of-day price information for the Shares, on its Web site (<http://www.amex.com/amextrader>).²²

On each price determination day, the per-Share values of the Up MacroShares and Down MacroShares, based on the Applicable Reference Price of Crude Oil established and reported by NYMEX, will be calculated and posted on the administrative agent's Web site (<http://www.macromarkets.com>). All investors and market participants will have access to the administrative agent's Web site at no charge.

The Exchange states that delayed information on futures contracts often is publicly available from futures exchanges. 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.

The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares

²² Amex will also 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.

appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation on behalf of the Trusts that the per-Share net asset values for the Trusts will be calculated daily and made available to all market participants at the same time. Additionally, the Exchange will halt trading in the Shares if the value of each Trust or the per-share 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. The Commission also notes that, pursuant to proposed Amex Rule 1402, the Exchange will remove from listing the Up MacroShares or the Down MacroShares under certain circumstances, including if: (1) 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 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; or (2) the IIV of the Share 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.

The Exchange has represented that the Shares are equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made the following representations:

- (1) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares and to deter and detect violations of Exchange rules and applicable federal securities laws.
- (2) Prior to the commencement of trading, the Exchange will inform its members and Member Organizations 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; (3) 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; (7) suitability obligations of members with respect to recommended transactions to customers in the Shares; (8) 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;²³ and (9) any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.²⁴

²³ See supra note 15.

²⁴ 15 U.S.C. 78f(b)(5).

C. Acceleration

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the Federal Register. The Commission notes that the Shares are substantially similar to another product previously approved for listing and trading on the Exchange.²⁵

Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change on an accelerated basis.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-Amex-2008-36) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Florence E. Harmon
Acting Secretary

²⁵ See supra note 20.

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30-3(a)(12).