

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82947; File No. TP 18-11)

March 26, 2018

Order Granting Limited Exemptions from Exchange Act Rule 10b-17(b)(1)(v)(A) and (B) and Rules 101 and 102 of Regulation M to PowerShares Wilshire Micro-Cap Portfolio Pursuant to Exchange Act Rule 10b-17(b)(2) and Rules 101(d) and 102(e) of Regulation M

By letter dated March 26, 2018 (“Letter”), counsel for PowerShares Exchange-Traded Fund Trust (the “Trust”), on behalf of the Trust, PowerShares Wilshire Micro-Cap Portfolio (“New Fund”), any national securities exchange on or through which shares of the New Fund (“Shares”) are listed and may subsequently trade, Invesco Distributors, Inc. (“Distributor”), and persons engaging in transactions in Shares (collectively, “Requestors”), requested exemptions, or interpretive or no-action relief, from Rule 10b-17(b)(1)(v)(A) and (B) of the Securities Exchange Act of 1934, as amended (“Exchange Act”), and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 100,000 shares (“Creation Units”).

The Trust is registered with the Securities and Exchange Commission (“Commission”) under the Investment Company Act of 1940, as amended (“1940 Act”), as an open-end management investment company. The Trust has acquired the Wilshire Micro-Cap ETF (“Existing Fund”), which has operated under prior exemptive relief (“Existing Relief”)¹ issued in response to a prior request by Claymore Exchange-Traded Fund Trust (“Original Request Letter”).² The New Fund is an exchange-traded fund (“ETF”) organized as a series of the Trust. The New Fund seeks to provide investment results that correspond generally to the performance,

¹ Letter from Josephine J. Tao, Assistant Dir., Div. of Trading & Mkts., SEC, to Jeremy Senderowicz, Dechert LLP (Dec. 16, 2011).

² Letter from Jeremy Senderowicz, Dechert LLP, to Josephine J. Tao, Assistant Dir., Div. of Trading & Mkts., SEC (Dec. 16, 2011).

before fees and expenses, of the Wilshire US Micro-Cap Index (“Underlying Index”). As a result of the Trust and the Claymore Exchange-Traded Fund Trust entering into an Agreement and Plan of Reorganization (“Reorganization Plan”), subject to the approval of the shareholders of the Existing Fund, the Existing Fund will transfer all or substantially all of its assets and all of its stated liabilities included in its financial statements to the New Fund in exchange for shares of the New Fund (and cash with respect to any fractional shares). In return, shares of the New Fund that are received by the Existing Fund will be distributed pro rata to the Existing Fund’s shareholders in liquidation of the Existing Fund. As a result, immediately after the reorganization, each former shareholder of the Existing Fund will own shares of the New Fund that will be approximately equal to the value of that shareholder’s full shares of such Existing Fund as of the closing date. Thus, Requestors represent that, although the New Fund is designed to be materially identical to the Existing Fund and operate as such, having an identical investment objective and principal investment strategies,³ the New Fund cannot rely on the terms and conditions of the Existing Relief because the Trust and the New Fund are legal entities that are different and distinct from the Claymore Exchange-Traded Fund Trust and the Existing Fund.

The Requestors represent that the Underlying Index is designed to represent micro-sized companies and is a subset of the Wilshire 5000 Total Market Index (“Wilshire 5000”). The Underlying Index represents a float-adjusted, market capitalization-weighted index of the securities ranked below 2500 by market capitalization of the Wilshire 5000. Under normal

³ Requestors represent that the only material difference will be the identity of the trust in which the series resides, the New Fund’s investment adviser, and a new distributor.

conditions,⁴ the New Fund will invest at least 90% of its total assets⁵ in the component securities of the Underlying Index.⁶

The Requestors represent, among other things, the following:

- Shares of the New Fund will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The New Fund holds 20 or more portfolio securities (each, a “Fund Security”) with no one Component Security constituting more than 25% of the New Fund;
- Creation Units will be continuously redeemable at the net asset value (“NAV”) next determined after receipt of a request for redemption by the New Fund, and the secondary market price of the Shares does not vary substantially from the NAV of such Shares;
- Shares of the New Fund will be listed and traded on NYSE Arca, Inc., or another exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act (the “Listing Exchange”);⁷

⁴ Requestors represent that the term “under normal conditions” as used in the Letter includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

⁵ “Total Assets” are comprised of the entirety of the assets of the New Fund prior to subtracting any liabilities of the New Fund. An investment company’s total assets will either equal its net assets (assuming zero liabilities), or (in instances in which there are liabilities) will exceed net assets and will exceed net assets plus any borrowing for investment purposes, if any. Regardless of the representation that the New Fund generally will invest at least 90% of its total assets in securities that comprise the underlying index, the New Fund seeks to have a tracking error of less than five percent measured on a monthly basis over a one-year period.

⁶ The New Fund may invest the remaining 10% of its total assets in certain futures, options and swap contracts, cash and cash equivalents, as well as in securities not included in the Index, which Invesco PowerShares Capital Management, LLC (“Investment Adviser”), believes will help the New Fund track the Index. These securities may include securities of other investment companies, and money market instruments, including repurchase agreements, or other funds which invest exclusively in money market instruments.

- The New Fund is managed to track the Underlying Index, and all of the components of the Underlying Index have publicly available last sale trade information. The value of the Underlying Index is publicly disseminated by a major market data vendor throughout the trading day
- Bank of New York Mellon (“Custodian”), in consultation with the Investment Adviser, makes available on each business day, immediately prior to the opening of trading on the Listing Exchange, a list of the names and the required number of shares of each Deposit Security⁸ that would be included in the current Fund Deposit (based on information at the end of the previous business day). In the same manner, the Custodian also makes available the previous day’s Cash Component and the estimated Cash Component for the current day;
- The Listing Exchange or other market information provider will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing on a per Share basis, the sum of the current value of the Deposit Shares and Cash Component (“IIV”);
- The New Fund will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The arbitrage mechanism will be facilitated by the transparency of the New Fund’s portfolio and the availability of the IIV, the liquidity of securities held by the New Fund,

⁷ Further, the Requestors represent in the Letter that, should the Shares also trade on a market pursuant to unlisted trading privileges, such trading will be conducted pursuant to self-regulatory organization rules that are, or will become, effective pursuant to Section 19(b) of the Exchange Act.

⁸ Shares generally are purchased in Creation Units in exchange for the in-kind deposit of a designated portfolio of equity securities (“Deposit Securities”) per each Creation Unit aggregation constituting a substantial replication of the stocks held by the Fund and an amount of cash (“Cash Component”). Together, the Deposit Securities and the Cash Component constitute the “Fund Deposit.”

the ability to acquire such securities, as well as arbitrageurs' ability to create workable hedges;

- The New Fund will invest solely in liquid securities;
- The Trust expects that arbitrageurs should continue to take advantage of price variations between the New Fund's market price and its NAV;
- A close alignment between the market price of Shares and the New Fund's NAV is expected; and
- The New Fund may utilize the Existing Fund's portfolio optimization methodology to reduce the New Fund's tracking error.

Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rules 101 and 102 of Regulation M, the Requestors may not rely upon those exceptions for the Shares.⁹ However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares of the New Fund as described in more detail below.

Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any "distribution participant" and its "affiliated purchasers" from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically

⁹ While ETFs operate under exemptions from the definitions of "open-end company" under Section 5(a)(1) of the 1940 Act and "redeemable security" under Section 2(a)(32) of the 1940 Act, the New Fund and its securities do not meet those definitions.

permitted in the Rule. Rule 100 of Regulation M defines “distribution” to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution, and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company, that Creation Unit size aggregations of the Shares of the New Fund will be continuously redeemable at the NAV next determined after receipt of a request for redemption by the New Fund, and that a close alignment between the market price of Shares and the New Fund’s NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (d) of Rule 101 of Regulation M with respect to the New Fund, thus permitting persons participating in a distribution of Shares of the New Fund to bid for or purchase such Shares during their participation in such distribution.¹⁰

Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, and any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid

¹⁰ Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the New Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the New Fund would not constitute an “attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period” within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company, that Creation Unit size aggregations of the Shares of the New Fund will be continuously redeemable at the NAV next determined after receipt of a request for redemption by the New Fund, and that a close alignment between the market price of Shares and the New Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the New Fund, thus permitting the New Fund to redeem Shares of the New Fund during the continuous offering of such Shares.

Rule 10b-17(b)(1)(v)(A) and (B)

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b-17(b). Based on the representations and facts in the Letter, and subject to the conditions below, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors to grant the Trust a conditional exemption from Rule 10b-17(b)(1)(v)(A) and (B) because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10b-17 will not be implicated.¹¹

¹¹ We also note that timely compliance with Rule 10b-17(b)(1)(v)(A) and (B) would be impractical in light of the nature of the New Fund. This is because it is not possible for the New Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date. Further, the Commission finds, based upon representations of the Requestors in the Letter, that the provision of the notices as

Conclusion

IT IS HEREBY ORDERED, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to the New Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the New Fund to bid for or purchase such Shares during their participation in such distribution.

IT IS FURTHER ORDERED, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the New Fund, thus permitting the New Fund to redeem Shares of the New Fund during the continuous offering of such Shares.

IT IS FURTHER ORDERED, pursuant to Rule 10b-17(b)(2), that the Trust, based on the representations and the facts presented in the Letter and subject to the conditions below, is exempt from the requirements of Rule 10b-17(b)(1)(v)(A) and (B) with respect to transactions in the shares of the New Fund.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b-17 except for Rule 10b-17(b)(1)(v)(A) and (B); and
- The Trust will provide the information required by Rule 10b-17(b)(1)(v)(A) and (B) to the Listing Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Listing Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the

described in the Letter and subject to the conditions of this Order would not constitute a manipulative or deceptive device or contrivance comprehended within the purpose of Rule 10b-17.

Exchange Act. This exemption is based on the facts presented and the representations made in the Letter. Any different facts or representations may require a different response. Persons relying upon this exemptive relief shall discontinue transactions involving the Shares of the New Fund, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors and, as is the case with all preceding letters, particularly with respect to the close alignment between the market price of Shares and the New Fund's NAV. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b-5 thereunder.

Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This Order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to, the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

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

Jill M. Peterson
Assistant Secretary

¹² 17 CFR 200.30-3(a)(6) and (9).