

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72241; File No. SR-NASDAQ-2014-027)

May 23, 2014

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the PowerShares Multi-Strategy Alternative Portfolio of PowerShares Actively Managed Exchange-Traded Fund Trust

I. Introduction

On March 24, 2014, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade the shares (“Shares”) of the PowerShares Multi-Strategy Alternative Portfolio (“Fund”) under Nasdaq Rule 5735. The proposed rule change was published for comment in the Federal Register on April 11, 2014.<sup>3</sup> The Commission received no comments on the proposal. On May 21, Nasdaq filed Amendment No. 1 to the proposal.<sup>4</sup> The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

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<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. 71892 (Apr. 7, 2014), 79 FR 20262 (“Notice”).

<sup>4</sup> In Amendment No. 1, Nasdaq amended the proposed rule change to: (i) narrow the scope of the Fund’s investments to exclude non-U.S. exchange traded index options; and (ii) specify where quotation and last sale information could be found for underlying exchange traded equities, options, and futures.

The Exchange proposes to list and trade Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares. The Shares will be offered by PowerShares Actively Managed Exchange-Traded Fund Trust (“Trust”). The Trust is registered with the Commission as an investment company as defined by the Investment Company Act of 1940 (“Investment Company Act”).<sup>5</sup> The Fund is a series of the Trust.

Invesco PowerShares Capital Management LLC will be the investment adviser (“Adviser”) to the Fund. The Fund may use one or more sub-advisers.<sup>6</sup> Invesco Distributors, Inc. (“Distributor”) will be the principal underwriter and distributor of the Shares. The Bank of New York Mellon will act as the administrator, accounting agent, custodian, and transfer agent for the Fund.

The Exchange represents that the Adviser is not a broker-dealer although it is affiliated with the Distributor, which is a broker-dealer.<sup>7</sup> The Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition

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<sup>5</sup> The Trust has filed a registration statement on Form N-1A (“Registration Statement”) with the Commission. See Registration Statement filed on November 27, 2013 (File Nos. 333-147622 and 811-22148). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 28171 (February 27, 2008) (File No. 812-13386).

<sup>6</sup> The Exchange states that no sub-adviser had been selected as of the date of filing of the Notice. See Notice supra note 3, 79 FR at 20263, n.6.

<sup>7</sup> See id. at 20263. The Exchange states in the event (a) the Adviser becomes newly affiliated with a broker-dealer (or becomes a registered broker-dealer), or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. See id. at 20263.

and/or changes to the portfolio. The Exchange also represents that the Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares<sup>8</sup> and that for initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Act.<sup>9</sup>

The Exchange has made the following additional representations and statements in describing the Fund and its investment strategy, including portfolio holdings and investment restrictions:

Principal Investments

According to the Exchange, the Fund’s investment objective will be to seek positive total returns that have low correlation to the broader securities markets. The Fund seeks to achieve its investment objective by actively investing in a combination of a varying number of market neutral and other investment strategies (“Strategies”) that aim to capture non-traditional risk premia across asset classes.

The Adviser will allocate the weightings of the Fund’s investments across the multiple Strategies according to a rules-based methodology and will reallocate the Fund’s assets among Strategies to achieve the Fund’s investment objective. The Strategies may include, but are not limited to, quantitative, volatility risk premium and carry Strategies. The Strategies are similar to the strategies included in its benchmark, and the Fund may hold the same types of instruments in similar weightings as the benchmark. The Adviser is not obliged to track the performance of the benchmark and will use proprietary portfolio management techniques to seek to exceed the benchmark’s performance.

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<sup>8</sup> See id. at 20267.

<sup>9</sup> See 17 CFR 240.10A-3. See also Notice, supra note 3 at 20267.

The Fund may take both long and short positions in exchange-traded equity securities and equity index futures.<sup>10</sup> The Fund also may take a long and a short position in various currencies by investing in currency forward and/or futures contracts.<sup>11</sup>

Additionally, the Fund may invest in index options.<sup>12</sup> In following various Strategies, the Fund may purchase and sell interest rate futures, including Eurodollar interest rate futures or Euro Euribor interest rate futures, and Chicago Board Options Exchange Volatility Index futures contracts.<sup>13</sup>

### The Subsidiary

The Fund may seek to gain exposure to these various derivative investments through investments in a subsidiary (“Subsidiary”), which in turn would make investments in those derivatives and other instruments. If utilized, the Subsidiary would be wholly-owned and controlled by the Fund, and its investments would be consolidated into the Fund’s financial statements.

Should the Fund invest in the Subsidiary, that investment may not exceed 25% of the Fund’s total assets at each quarter-end of the Fund’s fiscal year. Further, should the Fund invest in the Subsidiary, it would be expected to provide the Fund with exposure to futures contracts and other derivatives within the limits of Subchapter M of the Internal Revenue Code applicable

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<sup>10</sup> These equity securities, including exchange-traded equity securities of registered investment companies, and equity index futures will be traded on U.S. exchanges or non-U.S. exchanges that are members of the Intermarket Surveillance Group (“ISG”).

<sup>11</sup> Currency futures contracts will be traded on U.S. exchanges or non-U.S. exchanges that are ISG members. Currency forward contracts will be traded over-the-counter.

<sup>12</sup> Index options will be traded on U.S. exchanges that are ISG members. See Notice, supra note 3, at 20263, n.12. See also Amendment No. 1, supra, note 4.

<sup>13</sup> These futures contracts will be traded on U.S. exchanges or non-U.S. exchanges that are ISG members. See id. at 20263, n.13.

to investment companies, such as the Fund, which limit the ability of investment companies to invest directly in derivative instruments.

The Subsidiary would be able to invest in the same asset classes in which the Fund may invest, and the Subsidiary would be subject to the same general investment policies and restrictions as the Fund, except that, unlike the Fund, which must invest in derivatives in compliance with the requirements of Subchapter M of the Internal Revenue Code, federal securities laws and the Commodity Exchange Act, the Subsidiary may invest without limitation in futures contracts. According to the Exchange, references to the investment strategies and risks of the Fund include the investment strategies and risks of the Subsidiary.<sup>14</sup>

#### Other Investments

The Fund may invest in U.S. government securities, money market instruments, cash and cash equivalents (e.g., corporate commercial paper) to provide liquidity and to collateralize its investments in derivative instruments.

The Fund may invest in: (i) short-term obligations issued by the U.S. Government;<sup>15</sup> (ii) short term negotiable obligations of commercial banks, fixed time deposits and bankers' acceptances of U.S. and foreign banks and similar institutions;<sup>16</sup> and (iii) commercial paper rated at the date of purchase "Prime-1" by Moody's Investors Service, Inc. or "A-1+" or "A-1" by

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<sup>14</sup> See id. at 20264.

<sup>15</sup> The Fund may invest in U.S. government obligations. Obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities include bills, notes and bonds issued by the U.S. Treasury, as well as "stripped" or "zero coupon" U.S. Treasury obligations representing future interest or principal payments on U.S. Treasury notes or bonds.

<sup>16</sup> Time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates. Banker's acceptances are time drafts drawn on commercial banks by borrowers, usually in connection with international transactions.

Standard & Poor's or, if unrated, of comparable quality, as the Adviser of the Fund determines.

In addition, the Fund may invest in non-exchange listed securities of other investment companies (including money market funds) beyond the limits permitted under the 1940 Act, subject to certain terms and conditions set forth in a Commission exemptive order issued pursuant to Section 12(d)(1)(J) of the 1940 Act.<sup>17</sup>

#### Investment Restrictions

The Fund may not concentrate its investments (i.e., invest more than 25% of the value of its net assets) in securities of issuers in any one industry or group of industries. This restriction will not apply to obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities.

The Subsidiary's shares will be offered only to the Fund, and the Fund will not sell shares of the Subsidiary to other investors. The Fund and the Subsidiary will not invest in any non-U.S. equity securities (other than shares of the Subsidiary).

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities or other illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities or other illiquid assets. Illiquid securities and other illiquid assets include those subject to contractual or other restrictions on resale and other instruments or assets that lack readily available markets as determined in accordance with Commission staff guidance.

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<sup>17</sup> Investment Company Act Release No. 30238 (October 23, 2012) (File No. 812-13820).

Additional information regarding the Trust, Fund, Subsidiary, and Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes, calculation of net asset value per share (“NAV”), availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice or the Registration Statement, as applicable.<sup>18</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of Section 6 of the Act<sup>19</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>20</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>21</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 facilitating transactions 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 the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 to be listed and traded on the Exchange.

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<sup>18</sup> See Notice and Registration Statement, supra notes 3 and 5, respectively.

<sup>19</sup> 15 U.S.C. 78(f).

<sup>20</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

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,<sup>22</sup> 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 with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans.<sup>23</sup> Quotation and last sale information for any underlying exchange-traded equity will also be available via the quote and trade service of their respective primary exchanges, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans.<sup>24</sup> Quotation and last sale information for any underlying exchange-traded options will also be available via the quote and trade service of their respective primary exchanges and through the Options Price Reporting Authority.<sup>25</sup> Quotation and last sale information for any underlying exchange-traded futures contracts will be available via the quote and trade service of their respective primary exchanges.<sup>26</sup> In addition, the Intraday Indicative Value (as defined in Nasdaq Rule 5735(c)(3)) will be based upon the current value of the components of the Disclosed Portfolio (as defined in Nasdaq Rule 5735(c)(2)), will be available on the NASDAQ OMX Information LLC proprietary index data service,<sup>27</sup> and will be updated and widely disseminated

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<sup>22</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>23</sup> See Notice, supra note 3, 79 FR at 20267.

<sup>24</sup> See Amendment No. 1, supra note 4.

<sup>25</sup> See id.

<sup>26</sup> See id.

<sup>27</sup> According to the Exchange, the NASDAQ OMX Global Index Data Service is the



and broadly displayed at least every 15 seconds during the Regular Market Session.<sup>28</sup> On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio,<sup>29</sup> which will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>30</sup> The NAV of the Fund will be determined once each business day, normally as of the close of trading on the New York Stock Exchange (normally 4:00 p.m. Eastern time).<sup>31</sup> Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.<sup>32</sup> Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.<sup>33</sup> Intra-day, executable price quotations for the securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable.<sup>34</sup> Intra-day price information will also be available through subscription services, such as Bloomberg, Markit, and Thomson Reuters, which can be accessed by authorized participants and other investors.<sup>35</sup> The Fund's website will

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NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for exchange-traded funds. See Notice, supra note 3, 79 FR at 20266.

<sup>28</sup> See id.

<sup>29</sup> The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting and market value of securities and other assets held by the Fund and the Subsidiary and the characteristics of such assets. See id.

<sup>30</sup> The website information will be publicly available at no charge. See id.

<sup>31</sup> See id. at 20265.

<sup>32</sup> See id. at 20267.

<sup>33</sup> See id.

<sup>34</sup> See id. 20266.

<sup>35</sup> See id. at 20267.

include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.<sup>36</sup>

The Commission further 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 appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.<sup>37</sup> Further, trading in the Shares will be subject to Nasdaq 5735(d)(2)(D), which sets forth circumstances under which trading in the Shares may be halted.<sup>38</sup> The Exchange may halt trading in the Shares if trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>39</sup> Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of

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<sup>36</sup> See id. at 20266.

<sup>37</sup> See id. at 20267.

<sup>38</sup> See id.

<sup>39</sup> See id. See also 5735(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt or pause trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. See Notice, supra note 3, 79 FR at 20267.

the portfolio.<sup>40</sup> The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.<sup>41</sup> The Exchange states that the Adviser is not a broker-dealer and although it is affiliated a broker-dealer, the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Exchange also states that in the event (a) the Adviser becomes, or becomes newly affiliated with a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio.<sup>42</sup>

In support of this proposal, the Exchange has made representations, including:

- (1) The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.
- (2) The Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.
- (3) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

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<sup>40</sup> See Nasdaq Rule 5735(d)(2)(B)(ii).

<sup>41</sup> See Notice, supra note 3, 79 FR at 20267.

<sup>42</sup> See supra note 7 and accompanying text.

- (4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.
- (5) Trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.
- (6) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and other exchange-traded securities and instruments held by

the Fund with other markets and other entities that are members of the ISG<sup>43</sup> and FINRA may obtain trading information regarding trading in the Shares and exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

- (7) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Exchange Act.<sup>44</sup>
- (8) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.
- (9) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment); will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained; and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.

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<sup>43</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>44</sup> 17 CFR 240.10A-3.

(10) The Fund will not be operated in a manner designed to seek a multiple of the performance of an underlying reference index.

(11) The Fund's investments will be consistent with the Fund's investment objective.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 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-NASDAQ-2014-027 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2014-027. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 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-NASDAQ-2014-027, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, As Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice in the Federal Register. The amendment clarifies where price information can be found for certain underlying exchange traded assets, and thereby provides support that the overlying Shares will be fairly priced. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>45</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

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<sup>45</sup> 15 U.S.C. 78s(b)(2).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>46</sup> that the proposed rule change (SR-NASDAQ-2014-027), as modified by Amendment No 1, 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>47</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>46</sup> 15 U.S.C. 78s(b)(2).

<sup>47</sup> 17 CFR 200.30-3(a)(12).