

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79131; File No. SR-NYSEArca-2016-97)

October 21, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Relating to the Listing and Trading of Shares of PowerShares Government Collateral Pledge Portfolio Under NYSE Arca Equities Rule 8.600

I. Introduction

On July 6, 2016, NYSE Arca, Inc. (“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 list and trade shares (“Shares”) of the PowerShares Government Collateral Pledge Portfolio (“Fund”). The proposed rule change was published for comment in the Federal Register on July 26, 2016.³ On September 1, 2016, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission has received no comments on the proposed rule change. This order institutes

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 78373 (July 20, 2016), 81 FR 48869 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 78750, 81 FR 62233 (September 8, 2016). The Commission designated October 24, 2016 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

II. Exchange's Description of the Proposal

The Exchange proposes to list and trade the Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Fund is a series of the PowerShares Actively Managed Exchange Traded Trust ("Trust").⁷ Invesco PowerShares Capital Management LLC is the investment adviser for the Fund ("Adviser"), and Invesco Advisers, Inc. is the sub-adviser for the Fund ("Sub-Adviser"). The Bank of New York Mellon ("BNYM") will be the administrator, custodian, and transfer agent for the Fund. Invesco Distributors, Inc. will be the Fund's distributor ("Distributor"). The Exchange represents that, while neither the Adviser nor the Sub-Adviser is registered as a broker-dealer, the Adviser and Sub-Adviser are each affiliated with a broker-dealer. The Adviser and Sub-Adviser each has implemented and will maintain a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition of, and changes to, the Fund's portfolio.⁸ In

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ The Exchange represents that the Trust is registered under the Investment Company Act of 1940 ("1940 Act"). According to the Exchange, on May 20, 2016, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 and the 1940 Act relating to the Fund (File Nos. 333-147622 and 811-22148) ("Registration Statement"). In addition, the Exchange states that the Trust and the Adviser (as defined herein) have obtained certain exemptive relief from the Commission under the 1940 Act. See Investment Company Act Release No. 28171 (February 27, 2008) (File No. 812-13386) ("Exemptive Order"). The Exchange represents that the Fund will be offered in reliance upon the Exemptive Order issued to the Trust and the Adviser.

⁸ The Exchange further represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws.

the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate regarding access to information concerning the composition of, and 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.

The Exchange has made the following representations and statements in describing the Fund and its investment strategies, including the Fund's portfolio holdings and investment restrictions.⁹

A. Exchange's Description of the Fund's Principal Investments

According to the Exchange, the Fund's investment objective will be to seek to provide as high a level of current income as is consistent with liquidity and minimum volatility of principal.

Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. The Exchange represents that the Adviser and its related personnel are subject to Advisers Act Rule 204A-1. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

⁹ The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, net asset value ("NAV") calculation, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions, and taxes, among other information, is included in the Notice and the Registration Statement, as applicable. See Notice and Registration Statement, supra notes 3 and 7, respectively.

The Fund will seek to achieve its investment objective by investing, under normal market conditions,¹⁰ at least 80% of its net assets in a portfolio of registered U.S. government money market mutual funds (“Underlying Funds”)¹¹ and in U.S. dollar-denominated government securities and other money market securities eligible for investment by U.S. government money market funds (including indirect investments in those securities through the Underlying Funds).

Under normal market conditions, the Fund intends to invest a substantial portion of its assets in the following Underlying Funds: (a) Treasury Portfolio; (b) Government Tax Advantage Portfolio; (c) Government & Agency Portfolio; and (d) Premier US Government Money Portfolio, each of which is advised by an affiliate of the Adviser. The Sub-Adviser may add,

¹⁰ The term “under normal market conditions” includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income securities markets or the financial markets generally; circumstances under which the Fund’s investments are made for temporary defensive purposes; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

¹¹ According to the Exchange, each Underlying Fund is a “government money market fund,” as that term is defined under Rule 2a-7 of the 1940 Act (“Rule 2a-7”), and seeks to maintain a stable \$1.00 NAV. Each Underlying Fund has an investment objective of seeking to provide current income consistent with preservation of capital and liquidity. The securities held by the Underlying Funds will comply with all requirements of Rule 2a-7 and other Commission rules applicable to money market funds seeking a stable NAV. Each Underlying Fund invests at least 99.5% of its total assets in cash, government securities, and/or repurchase agreements collateralized by cash or government securities. In addition, each Underlying Fund invests only in U.S. dollar-denominated securities maturing within 397 days of the date of purchase, with certain exceptions permitted by applicable regulations, and maintains a dollar-weighted average portfolio maturity of no more than 60 days, and a dollar-weighted average portfolio maturity (as determined without exceptions regarding certain interest rate adjustments under Rule 2a-7) of no more than 120 days. The Exchange represents that, unlike the Underlying Funds, the Fund will not be a money market fund, meaning that the Fund will not seek to maintain a stable NAV of \$1.00, nor will it be subject to other requirements of Rule 2a-7. However, the Fund will only purchase securities issued by registered government money market funds, or securities that comply with the quality and eligibility requirements of Rule 2a-7. The Fund and the Underlying Funds may invest in variable and floating rate instruments that are permitted under the requirements of Rule 2a-7, and may transact in securities on a when-issued, delayed delivery, or forward commitment basis.

eliminate, or replace any or all Underlying Funds at any time. Any additions to or replacements of the Underlying Funds in the Fund's portfolio also will be registered U.S. government money market funds with investment characteristics that are substantially similar to those of the Underlying Funds. The Adviser, the Sub-Adviser, or their affiliates may advise some or all the Underlying Funds. In constructing the Fund's portfolio, the Sub-Adviser generally will allocate and re-allocate the Fund's assets among the Underlying Funds on a monthly basis on an approximate pro rata basis that is based on the amount of net assets of each Underlying Fund. However, the Sub-Adviser is not required to invest the Fund's assets in any particular Underlying Fund or allocate any particular percentage of the Fund's assets to any particular Underlying Fund.

B. Exchange's Description of the Fund's Other Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in the securities and financial instruments described above, the Fund may invest its remaining assets in other assets and financial instruments, as described below.

The Fund (and the Underlying Funds) may invest in certain U.S. government obligations other than those referenced above, namely Treasury receipts where the principal and interest components are traded separately under the Separate Trading of Registered Interest and Principal of Securities (STRIPS) program. The Fund also may invest directly in repurchase agreements and reverse repurchase agreements.

C. Exchange's Description of the Fund's Investment Restrictions

According to the Exchange, the Fund will be classified as "non-diversified."

The Fund intends to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a regulated investment company for purposes of the U.S. Internal Revenue Code of 1986, as amended.

The Fund may invest up to an aggregate amount of 15% of its net assets in 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 assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund will not invest in futures, options, swaps, or forward contracts.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).

III. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2016-97 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹² to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has

¹² 15 U.S.C. 78s(b)(2)(B).

reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹³ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest."¹⁴

Under the proposal, BNYM will calculate the Fund's NAV at 12:00 p.m., Eastern time, every day the New York Stock Exchange is open. In addition, to initiate an order for a creation unit, the Distributor or its agent must receive an irrevocable order from an authorized participant, in proper form, no later than 12:00 p.m., Eastern time, in each case on the date such order is placed in order to receive that day's NAV. Likewise, with respect to redemptions, an authorized participant must submit an irrevocable request to redeem shares of the Fund generally before 12:00 p.m., Eastern time on any business day in order to receive that day's NAV. The Commission notes the proposal does not provide any explanation for the early NAV calculation time and creation and redemption cut-off time. The proposal also does not explain whether the early NAV calculation time and creation and redemption cut-off time would have any impact on the trading of the Shares, including any impact on arbitrage. Accordingly, the Commission seeks commenters' views on the 12:00 p.m. NAV calculation time and creation and redemption cut-off time, and on whether the Exchange's statements relating to the NAV calculation and the creation

¹³ Id.

¹⁴ 15 U.S.C. 78f(b)(5).

and redemption process support a determination that the listing and trading of the Shares would be consistent with Section 6(b)(5) of the Act, which, among other things, requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.¹⁵

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. The Commission asks that commenters address the sufficiency of the Exchange's

¹⁵ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

statements in support of the proposal, which are set forth in the Notice,¹⁶ in addition to any other comments they may wish to submit about the proposed rule change.

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. Please include File Number SR-NYSEArca-2016-97 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-NYSEArca-2016-97. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit

¹⁶ See supra note 3.

personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2016-97 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Brent J. Fields
Secretary

¹⁷ 17 CFR 200.30-3(a)(57).