

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57771; File No. SR-NASDAQ-2008-038)

May 2, 2008

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade Shares of Certain PowerShares Actively Managed Exchange-Traded Funds Pursuant to Unlisted Trading Privileges

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 25, 2008, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. This order provides notice of filing of the proposed rule change and approves it on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to trade the shares (“Shares”) of four funds of the PowerShares Actively Managed Exchange-Traded Fund Trust (“Trust”) pursuant to unlisted trading privileges (“UTP”). The text of the proposed rule change is available at Nasdaq’s principal office, the Commission’s Public Reference Room, and www.nasdaq.complinet.com.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to trade the Shares of the following funds pursuant to UTP: (1) the PowerShares Active AlphaQ Fund; (2) the PowerShares Active Alpha Multi-Cap Fund; (3) the PowerShares Active Mega-Cap Portfolio; and (4) the PowerShares Active Low Duration Portfolio (collectively, the “Funds”). The Commission has recently approved the listing and trading of the Shares of the Funds on NYSE Arca Equities, Inc.³ The Shares are offered by the Trust, a business trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.⁴ The Trust currently consists of the Funds, each of which is an actively managed exchange-traded fund. The Exchange represents that the Funds will not purchase or sell securities in markets outside the United States.

Description of the Funds and the Trust

PowerShares Capital Management LLC (“Advisor”) is the investment advisor to the Funds. AER Advisors, Inc. (“AER”) is the subadvisor to the PowerShares Active AlphaQ Fund and the PowerShares Active Alpha Multi-Cap Fund (the “Initial AER Funds”), and Invesco

³ See Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25) (“NYSE Arca Proposal”).

⁴ The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On November 26, 2007, the Trust filed with the Commission a Registration Statement for the Funds on Form N-1A under the Securities Act of 1933 and under the 1940 Act (File Nos. 333-147622 and 811-22148) (“Registration Statement”). On November 16, 2007, the Trust filed with the Commission an Amended and Restated Application (“Application”) for an Amended Order under Sections 6(c) and 17(b) of the 1940 Act. See Investment Company Act Release No. 28140 (February 1, 2008), 73 FR 7328 (February 7, 2008) (File No. 812-3386).

Institutional (N.A.) Inc. (“Invesco”) is the subadvisor to the PowerShares Active Mega-Cap Portfolio and the PowerShares Active Low Duration Portfolio.⁵ The Advisor, AER, and Invesco are each registered as an investment adviser under the Investment Advisers Act of 1940.

AER will employ its unique stock screening methodology in the management of the Initial AER Funds. In employing its methodology, AER tracks and rates all U.S. stocks of companies with over \$400 million market capitalization and which are listed on a national securities exchange. It is anticipated by AER that less than 3% of all securities in the Master Stock List⁶ will be American Depositary Receipts (“ADRs”) and that ADRs will not represent more than 3% of any one Fund. Each Initial AER Fund’s investment objective will be to provide long-term capital appreciation by investing, under normal conditions, at least 95% of its total assets in stocks represented in its appropriate universe as determined by AER. The balance of the Initial AER Fund’s assets may be invested in cash and money market instruments. Each Initial AER Fund’s benchmark index will be a broad-based index relevant to its investment objective, strategy, and market capitalization. AER anticipates that the benchmark indexes for the Initial AER Funds will be as follows: (1) NASDAQ 100 Index for the PowerShares Active AlphaQ Fund; and (2) S&P 500 Index for the PowerShares Active Alpha Multi-Cap Fund.

The PowerShares Active Mega-Cap Portfolio’s investment objective is long-term growth of capital. The PowerShares Active Mega-Cap Portfolio seeks to meet its objective by normally investing at least 80% of its assets in a diversified portfolio of equity securities of mega-

⁵ The Exchange states that the information provided herein is based on information included in the Application.

⁶ “Master Stock List” is defined in the Registration Statement. See E-mail from Jonathan Cayne, Associate General Counsel, Nasdaq, to Edward Cho, Special Counsel, and Steve Varholik, Staff Attorney, Division of Trading and Markets, Commission, dated April 30, 2008 (referring to the Registration Statement for the definition of Master Stock List).

capitalization companies. The principal type of equity securities purchased by the Fund is common stock. The PowerShares Active Mega-Cap Portfolio may also invest in derivative instruments such as futures contracts and equity-linked derivatives. The PowerShares Active Low Duration Portfolio's investment objective is to provide total return. The PowerShares Active Low Duration Portfolio seeks to meet its investment objective by exceeding the total return of the Lehman Brothers 1-3 Year U.S. Treasury Index. The PowerShares Active Low Duration Portfolio seeks to meet its objective by normally investing at least 80% of its assets in a diversified portfolio of U.S. government and corporate debt securities. The PowerShares Active Low Duration Portfolio may invest in structured securitized debt securities, such as asset-backed securities and both residential and commercial mortgage-backed securities, and the Fund's investments may include investments in derivative instruments. Derivative instruments in which the Fund may invest include, but are not limited to, swaps including interest rate, total return, and credit default swaps; put options; call options; and futures contracts and options on futures contracts. The Fund may also utilize other strategies such as dollar rolls and reverse repurchase agreements. The Fund may invest up to 25% of its total assets in non-investment-grade securities (junk bonds).

The Exchange states that additional information regarding the Funds, the Shares, the Trust, creations and redemptions, Disclosed Portfolio (defined below), and Intraday Indicative Value can be found in the NYSE Arca Proposal⁷ and the Registration Statement,⁸ as applicable.

Availability of Information

The Funds' Web site (www.powershares.com) will include a form of the prospectus for

⁷ See supra note 3.

⁸ See supra note 4.

each Fund. The Web site will also include additional quantitative information for each Fund updated on a daily basis, including: (1) daily trading volume, the prior business day's reported closing price, the net asset value ("NAV") and the mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),⁹ and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day before commencement of the Regular Market Session on the Exchange,¹⁰ the Funds will disclose on their Web site the identities and quantities of the securities and other assets that will form the basis for the calculation of NAV for each Fund at the end of the business day ("Disclosed Portfolio").¹¹

Investors interested in a particular Fund can also obtain the Trust's Statement of Additional Information ("SAI"), each Fund's Shareholder Reports, and its Form N-CSR and Form N-SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's Web site (www.sec.gov).

⁹ The Bid/Ask Price of a Fund is determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

¹⁰ See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 7:00 a.m. to 9:30 a.m.; (2) Regular Market Session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m.; and (3) Post-Market Session from 4:00 p.m. or 4:15 p.m. to 8:00 p.m.).

¹¹ Under accounting procedures followed by the Funds, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1").

Information regarding market price and volume is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The NAV of each Fund will normally be determined as of the close of the Regular Market Session on Nasdaq (ordinarily 4:00 p.m. Eastern Time or "ET") on each business day. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotations and last-sale information for the Shares will be available through the facilities of the Consolidated Tape Association ("CTA"). In addition, the Intraday Indicative Value¹² will be disseminated at least every 15 seconds during the Regular Market Session through the facilities of the CTA.

Trading Halts

Nasdaq will halt trading in the Funds under the conditions specified in Nasdaq Rules 4120 and 4121, including the provisions of Nasdaq Rule 4120(b) relating to temporary interruptions in the calculation or wide dissemination of the Intraday Indicative Value, among other values. In addition, if Nasdaq becomes aware that the NAV or the Disclosed Portfolio with respect to a Fund is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV and/or the Disclosed Portfolio, as the case may be, is available to all market participants. Nasdaq may also cease trading the Shares of the Funds if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally,

Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

¹² The Exchange states that the Intraday Indicative Value is also sometimes referred to as the "Portfolio Indicative Value" with respect to these securities.

the Exchange states that the conditions for a halt include a regulatory halt by the listing market and will stop trading the Shares if the listing market delists them.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares 7:00 a.m. until 8:00 p.m.

Surveillance

The Exchange states that it intends to utilize its existing surveillance procedures applicable to derivative products (including exchange-traded funds) to monitor trading in the Shares. The Exchange represents that such procedures are adequate to address any concerns about the trading of the Shares on Nasdaq.

Trading of the Shares through Nasdaq will be subject to the surveillance procedures of the Financial Industry Regulatory Authority ("FINRA") applicable to equity securities, in general, and exchange-traded funds, in particular.¹³ The Exchange further states that it may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members or affiliate members of ISG.

Information Circular

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: (1) the procedures for

¹³ The Exchange states that FINRA surveils trading on Nasdaq pursuant to a regulatory services agreement. Nasdaq is responsible for FINRA's performance under this regulatory services agreement.

purchases and redemptions of Shares (and that Shares are not individually redeemable); (2) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction;¹⁴ (5) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions¹⁵ when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (6) trading information; (7) any exemptive, no-action, or interpretive relief granted by the Commission from any rules under the Act; (8) that the Funds are subject to various fees and expenses described in the Registration Statement; (9) that the Commodities Futures Trading Commission has regulatory jurisdiction over the trading of futures contracts; (10) the trading hours of the Shares of the Funds; (11) that the NAV for the Shares will be calculated after 4:00 p.m. ET each trading day; and (12) that information about the Shares of each Fund will be publicly available on the Funds' Web site.

¹⁴ The Exchange notes that investors purchasing Shares directly from a Fund will receive a prospectus. Members purchasing Shares from a Fund for resale to investors will deliver a prospectus to such investors.

¹⁵ See supra note 10.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and Section 6(b)(5) of the Act,¹⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Nasdaq's rules and procedures governing the trading of the Shares pursuant to UTP are also consistent with the goals of Section 6(b)(5) of the Act and the protection of investors. Specifically, the trading of the Shares is consistent with Section 6(b)(5) of the Act because it creates competition in the marketplace, for the benefit of investors and other market participants. In addition, Nasdaq believes that the proposal is consistent with Rule 12f-5 under the Act¹⁸ because it deems the Shares of the Funds to be equity securities, thus rendering trading in such Fund Shares subject to the Exchange's existing rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 17 CFR 240.12f-5.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Nasdaq states that written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2008-038 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NASDAQ-2008-038. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for inspection and copying in the Commission's Public Reference Room, 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 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-2008-038 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁹ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,²⁰ which requires 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, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general to protect investors and the public interest.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,²¹ which permits an exchange to trade, pursuant to UTP, a security that is listed and

¹⁹ In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 15 U.S.C. 78l(f).

registered on another exchange.²² The Commission notes that it has approved the listing and trading of the Shares on NYSE Arca Equities, Inc.²³ The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,²⁴ which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it 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.

The Commission further believes that the proposal is consistent with Section 11A(a)(C)(iii) of the Act,²⁵ 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. Quotations for and last-sale information regarding the Shares are disseminated through the facilities of the CTA. In addition, the Intraday Indicative Value is calculated and disseminated through the facilities of the CTA at least every 15 seconds throughout Nasdaq’s Regular Market Session, and, on each business day prior to the commencement of the Regular Market Session, the Funds disclose on their Web site the

²² Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange “extends UTP.” When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

²³ See supra note 3.

²⁴ 17 CFR 240.12f-5.

²⁵ 15 U.S.C. 78k-1(a)(1)(C)(iii).

Disclosed Portfolio. The Funds' Web site also makes available the prospectus for each Fund and additional quantitative information for each Fund, including daily trading volume, previous closing prices, NAV, and other information relating to NAV and the Bid/Ask Price.

The Commission also believes that the proposal appears reasonably designed to preclude trading of the Shares if transparency is impaired or there is unfair dissemination of the NAV or Portfolio Disclosure. Trading in the Shares will be subject to Nasdaq Rule 4120(b), which provides that, if the listing market halts trading when the Intraday Indicative Value, among other values, is not being calculated or disseminated, the Exchange would also halt trading. Nasdaq also would halt trading of Shares with respect to a Fund if it becomes aware that the NAV or the Disclosed Portfolio of that Fund is not disseminated to all market participants at the same time. Nasdaq would resume trading the Shares only when the NAV and/or Disclosed Portfolio, as the case may be, is available to all market participants.

The Commission notes that, if the Shares should be delisted by the listing exchange, the Exchange would no longer have the authority to trade Shares pursuant to this order.

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

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares and to address any concerns about the trading of the Shares on Exchange.
2. Prior to the commencement of trading, the Exchange would inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares.
3. The Information Circular would discuss, among other things, the requirement that

members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of the transaction and the risks involved in trading Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated.

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

The Commission finds good cause for approving this proposed rule change before the thirtieth day after publication of notice thereof in the Federal Register. As noted above, the Commission previously found that the listing and trading of Shares on NYSE Arca Equities, Inc. is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that earlier finding or precludes the trading of such Shares on Nasdaq pursuant to UTP. For these reasons, accelerating approval of Nasdaq's proposal should benefit investors by creating, without undue delay, additional competition in the market for these Shares.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-NASDAQ-2008-038) 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
Deputy Secretary

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30-3(a)(12).