

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78437; File No. SR-NASDAQ-2016-056)

July 28, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Shares of the PowerShares Variable Rate Investment Grade Portfolio, a series of the PowerShares Actively Managed Exchange-Traded Fund Trust

I. Introduction

On April 13, 2016, The NASDAQ Stock Market LLC (“Exchange” or “Nasdaq”) 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the PowerShares Variable Rate Investment Grade Portfolio (“Fund”), a series of the PowerShares Actively Managed Exchange-Traded Fund Trust (“Trust”) under Nasdaq Rule 5735. The proposed rule change was published for comment in the Federal Register on May 2, 2016.³ On May 5, 2016, the Exchange filed Amendment No. 1 to the proposed rule change. On June 14, 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 On June 29, 2016, the Exchange filed Amendment No.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 77715 (April 26, 2016), 81 FR 26285 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 78063, 81 FR 39972 (June 20, 2016). The Commission designated July 29, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

2 to the proposed rule change.⁶ On July 15, 2016, the Exchange filed Amendment No. 3 to the proposed rule change.⁷ The Commission received no comments on the proposal. The Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

II. Exchange's Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund is a series of the Trust and will be an actively-managed ETF. The Trust, which was established as a Delaware statutory trust on November 6, 2007 and is registered with the Commission as an investment company, has filed with the Commission a post-effective amendment to its registration statement on Form N-1A ("Registration Statement").⁸ Invesco PowerShares Capital Management LLC will serve as the investment adviser ("Adviser") to the Fund, and Invesco

⁶ On July 15, 2016, the Exchange withdrew Amendment No. 2.

⁷ In Amendment No. 3, which amended and replaced the original filing as modified by Amendment No. 1, the Exchange: (a) clarified the scope of mortgage-backed securities ("MBS") that could be held by the Fund; (b) clarified that the Fund will not invest (i) in commercial loans, (ii) in leveraged, inverse, or inverse leveraged exchange-traded funds ("ETFs"), or (iii) more than 20% of its net assets in the aggregate in asset-backed securities ("ABS") or non-agency MBS; (c) amended the quantitative standards applicable to the portfolio, including identifying the quantitative standards that must be met on a continuous basis; (d) clarified that the Fund may invest in non-exchange listed securities of money market mutual funds beyond the limits permitted under the Investment Company Act of 1940 ("1940 Act"); (e) clarified certain aspects of the net asset value ("NAV") calculation and the availability of price information for certain holdings; and (f) made certain technical amendments. Amendment No. 3 is available at: <https://www.sec.gov/comments/sr-nasdaq-2016-056/nasdaq2016056-3.pdf>.

⁸ See Registration Statement for the Trust, filed on September 4, 2015 (File Nos. 333-147622 and 811-22148). The Exchange represents that the Trust has 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).

Advisers, Inc. will serve as the sub-adviser to the Fund (“Sub-Adviser”). Invesco Distributors, Inc. will serve as the principal underwriter and distributor (“Distributor”) of the Fund’s Shares.⁹ The Bank of New York Mellon will act as the administrator, accounting agent, custodian (“Custodian”) and transfer agent for the Fund.

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.¹⁰

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

The Fund’s investment objectives are to seek to generate current income while maintaining low portfolio duration, as a primary objective, and capital appreciation, as a secondary objective. The Fund will seek to achieve its investment objectives by investing, under normal market conditions,¹¹ at least 80% of its net assets (plus any borrowings for investment

⁹ The Exchange represents that, while the Adviser and the Sub-Adviser are not broker-dealers, they are affiliated with the Distributor, a broker-dealer. The Exchange states that the Adviser and the Sub-Adviser have implemented and will maintain a fire wall between themselves and the Distributor with respect to access to information concerning the composition of, and changes to, the Fund’s portfolio. In the event (a) the Adviser or Sub-Adviser becomes newly affiliated with a different broker-dealer (or becomes a registered broker-dealer), or (b) any new adviser or sub-adviser to the Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, each will implement and maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition of, and changes to, the Fund’s portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

¹⁰ The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, NAV calculation, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions, and taxes, among other information, is included in the Notice, as modified by Amendment No. 3, and the Registration Statement, as applicable. See Amendment No. 3 and Registration Statement, supra notes 7 and 8, respectively, and accompanying text.

¹¹ According to the Exchange, the term “under normal market conditions” includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial

purposes) in a portfolio of investment-grade, variable rate¹² debt securities that are denominated in U.S. dollars and are issued by U.S. private sector entities or U.S. government agencies and instrumentalities. The Adviser or Sub-Adviser will select the following types of securities for the Fund: (i) floating rate non-agency commercial MBS,¹³ variable rate non-agency residential MBS, variable rate agency MBS,¹⁴ and floating rate non-agency ABS;¹⁵ (ii) floating rate corporate debt securities, which will be comprised of corporate notes, bonds, or debentures, and 144A securities;¹⁶ (iii) floating rate government sponsored enterprise credit risk transfers; (iv)

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. The Exchange states that, for temporary defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objectives. The Fund may adopt a defensive strategy when the Adviser or Sub-Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

¹² According to the Exchange, with respect to this filing, the term “variable-rate” includes similar terms, such as “floating rate” and “adjustable rate.”

¹³ For purposes of this filing, MBS will consist of: (1) residential MBS; (2) commercial MBS; (3) stripped MBS; and (4) collateralized mortgage obligations and real estate mortgage investment conduits.

¹⁴ Agency securities for these purposes generally includes securities issued by the following entities: Government National Mortgage Association; Federal National Mortgage Association; Federal Home Loan Banks; Federal Home Loan Mortgage Corporation; Farm Credit System (“FCS”); Farm Credit Banks; Student Loan Marketing Association; Resolution Funding Corporation; Financing Corporation; and the FCS Financial Assistance Corporation. Agency securities can include, but are not limited to, MBS.

¹⁵ The Fund currently intends to invest in ABS that are consumer and corporate ABS. According to the Exchange, floating rate non-agency ABS also include floating rate non-agency commercial real estate collateralized loan obligations (“CLOs”).

¹⁶ The Fund will invest in floating rate corporate securities that have interest rates that reset periodically. The interest rates are based on a percentage above the London Interbank Offered Rate, a U.S. bank’s prime or base rate, the overnight federal funds rate, or another rate. Corporate securities in which the Fund invests may be senior or subordinate

variable rate preferred stock;¹⁷ (v) floating rate U.S. government securities, including floating rate agency debt securities; and (vi) ETFs that invest primarily in any or all of the foregoing securities, to the extent permitted by the 1940 Act¹⁸ (any or all of the foregoing securities, excluding variable rate preferred stock and ETFs, collectively, “Variable Rate Debt Instruments”; Variable Rate Debt Instruments, variable rate preferred stock, and ETFs, collectively, “Variable Rate Investments”).

At least 80% of the Fund’s net assets will be invested in Variable Rate Debt Instruments or variable rate preferred stock that are, at the time of purchase, investment grade, or in ETFs that invest primarily in any or all of the foregoing securities. Under normal market conditions, Variable Rate Debt Instruments or variable rate preferred stock will be investment grade if, at the time of purchase, they have a rating in one of the highest four rating categories of at least one

obligations of the borrower. The Fund will not invest in senior or junior commercial loans. The Fund will generally invest in floating rate corporate securities that the Adviser or Sub-Adviser (as applicable) deems to be liquid with readily available prices. Notwithstanding the foregoing, the Fund may invest in corporate securities that are deemed illiquid so long as the Fund complies with the 15% limitation on investments of its net assets in illiquid assets described below.

¹⁷ The variable rate preferred stock in which the Fund may invest will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (“ISG”) or exchanges that are parties to a comprehensive surveillance sharing agreement with the Exchange.

¹⁸ ETFs in which the Fund invests will be listed and traded in the U.S. on registered exchanges. The ETFs in which the Fund will invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depositary Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). The shares of ETFs in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG or exchanges that are parties to a comprehensive surveillance sharing agreement with the Exchange. The Fund will not invest in leveraged ETFs, inverse ETFs, or inverse leveraged ETFs.

nationally recognized statistical ratings organization (“NRSRO”).¹⁹ Unrated securities may be considered investment grade if, at the time of purchase, and under normal market conditions, the Adviser or Sub-Adviser determines that such securities are of comparable quality based on a fundamental credit analysis of the unrated security and comparable NRSRO-rated securities.

The Fund will not invest more than 20% of its net assets in the aggregate in ABS or non-agency MBS.

Under normal market conditions, the Fund will satisfy the following requirements, with respect to (i) and (iii) on a continuous basis, and with respect to (ii) and (iv) on a continuous basis measured at the time of purchase: (i) at least 75% of the investments in corporate debt securities shall have a minimum original principal amount outstanding of \$100 million or more; (ii) no Variable Rate Investment (excluding U.S. government securities) will represent more than 30% of the weight of the Variable Rate Debt Instrument component of the Fund’s portfolio, and the five most heavily weighted portfolio securities will not in the aggregate account for more than 65% of the weight of the Variable Rate Debt Instrument component of the Fund’s portfolio; (iii) the portfolio will include a minimum of 13 non-affiliated issuers; and (iv) portfolio securities that in aggregate account for at least 90% of the weight of the portfolio will be (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Exchange Act, (b) from issuers that have a worldwide market value of outstanding common equity held by non-affiliates of \$700 million or more, (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion, or (d) exempted securities as defined in Section 3(a)(12) of the Exchange Act.

¹⁹ According to the Exchange, if a security is rated by multiple NRSROs and receives different ratings, the Fund will treat the security as being rated in the highest rating category received from any one NRSRO.

Under normal market conditions, the Fund will have investment exposure to a wide variety of Variable Rate Investments. During periods of market volatility, however, the Fund may allocate a significant portion of its net assets to floating rate U.S. Treasury debt securities and agency MBS.

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

According to the Exchange, under normal market conditions, the Fund will invest primarily in the Variable Rate Investments described above to meet its investment objectives. In addition, the Fund may invest up to 20% of its net assets in Variable Rate Debt Instruments or variable rate preferred stock rated below investment grade, and in fixed-rate debt instruments that are rated either investment grade or below investment grade.

The Fund may invest in the following fixed-rate debt instruments: (i) fixed-rate MBS and ABS (which includes fixed-rate commercial real estate CLOs);²⁰ (ii) fixed-rate U.S. government and agency securities; (iii) fixed-rate corporate debt securities, which will be comprised of corporate notes, bonds, or debentures, and 144A corporate securities;²¹ (iv) fixed-rate exchange traded preferred stock;²² and (v) ETFs that invest primarily in any or all of the foregoing

²⁰ As noted above, the Fund will not invest more than 20% of its net assets in the aggregate in ABS or non-agency MBS.

²¹ The Fund will generally invest in fixed-rate corporate securities that the Adviser or Sub-Adviser (as applicable) deems to be liquid with readily available prices. Notwithstanding the foregoing, the Fund may invest in corporate securities that are deemed illiquid so long as the Fund complies with the 15% limitation on investments of its net assets in illiquid assets described below.

²² The fixed-rate preferred stock in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG or that are parties to a comprehensive surveillance sharing agreement with the Exchange.

securities²³ (any or all of the foregoing securities, excluding fixed-rate exchange-traded preferred stock and ETFs, collectively, “Fixed Rate Debt Instruments”; Fixed Rate Debt Instruments, fixed-rate exchange traded preferred stock, and ETFs, collectively, “Fixed Rate Investments”).

The Fund may invest in non-exchange listed securities of money market mutual funds beyond the limits permitted under the 1940 Act, subject to certain terms and conditions set forth in a Commission exemptive order issued to the Trust pursuant to Section 12(d)(1)(J) of the 1940 Act, or other Commission relief.²⁴

The Fund may also take a temporary defensive position and hold a portion of its assets in cash and cash equivalents and money market instruments²⁵ if there are inadequate investment opportunities available due to adverse market, economic, political or other conditions, or atypical circumstances such as unusually large cash inflows or redemptions.²⁶

C. Exchange’s Description of the Fund’s 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.

²³ The shares of ETFs in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG or that are parties to a comprehensive surveillance sharing agreement with the Exchange.

²⁴ See Investment Company Act Release No. 30238 (October 23, 2012) (File No. 812-13820).

²⁵ For the Fund’s purposes, money market instruments will include: short-term, high quality securities issued or guaranteed by non-U.S. governments, agencies, and instrumentalities; non-convertible corporate debt securities with remaining maturities of not more than 397 days that satisfy ratings requirements under Rule 2a-7 of the 1940 Act; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions.

²⁶ See supra note 11.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A corporate debt securities deemed illiquid by the Adviser.²⁷ 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.

The Fund will not invest in futures, options, forwards, swaps, or other derivatives.

The Fund intends to qualify for and to elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code.

The Fund's investments will be consistent with the Fund's investment objectives. Additionally, the Fund may engage in frequent and active trading of portfolio securities to achieve its investment objectives. The Fund does not presently intend to engage in any form of borrowing for investment purposes and will not be operated as a "leveraged ETF," i.e., it will not be operated in a manner designed to seek a multiple or inverse multiple of the performance of an underlying reference index.

III. Discussion and Commission's Findings

²⁷ In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades.

After careful review, the Commission finds that the Exchange's proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁸ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,²⁹ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,³⁰ which sets forth the finding of Congress 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 for the Shares. The Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Market Session.³¹ 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 identities and quantities of the portfolio of securities and other assets ("Disclosed Portfolio" as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will

²⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ 15 U.S.C. 78k-1(a)(1)(C)(iii).

³¹ See Nasdaq Rule 4120(b)(4) (describing the trading sessions on the Exchange).

form the basis for the Fund's calculation of NAV at the end of the business day.³² The Fund's website will also include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. 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. Intraday, executable price quotations, as well as closing price information on exchange-listed securities, Variable Rate Debt Instruments, Fixed Rate Debt Instruments, and other assets not traded on an exchange will be available from major broker-dealer firms or market data vendors or from the exchange on which they are traded, as well as from automated quotation systems, published or other public sources, or online information services.³³ Additionally, the Financial Industry Regulatory Authority's ("FINRA") Trade Reporting and Compliance Engine ("TRACE") will be a source of price information for corporate bonds, privately-issued securities, MBS, and ABS to the extent transactions in such securities are reported to TRACE. Intraday and closing price information related to U.S. government securities, money market mutual funds, and

³² In addition to disclosing the identities and quantities of the portfolio of securities and other assets in the Disclosed Portfolio, the Fund also will disclose on a daily basis on its website the following information, as applicable to the type of holding: ticker symbol, if any; CUSIP number or other identifier, if any; a description of the holding (including the type of holding); quantity held (as measured by, for example, par value, number of shares or units); maturity date, if any; coupon rate, if any; market value of the holding; and percentage weighting of the holding in the Fund's portfolio. The website and information will be publicly available at no charge. The Fund's administrator will calculate the Fund's NAV per Share as of the close of regular trading (normally 4:00 p.m. E.T.) on each day the New York Stock Exchange is open for business.

³³ Quotation and last-sale information for any exchange-traded instruments (including preferred stocks and ETFs) also will be available in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans.

other short-term investments held by the Fund also will be available through subscription services, such as Bloomberg, Markit, and Thomson Reuters, which can be accessed by authorized participants and other investors.

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 Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily, and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Nasdaq will halt 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). In addition, trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth additional circumstances under which Shares of the Fund may be halted.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Further, the Commission notes that the Reporting Authority³⁴ 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

³⁴ Nasdaq Rule 5735(c)(4) defines “Reporting Authority.”

regarding the actual components of the portfolio.³⁵ In addition, the Exchange states that the Adviser and the Sub-Adviser are affiliated with the Distributor, a broker-dealer, and that the Adviser and the Sub-Adviser have implemented, and will maintain, a fire wall between themselves and the Distributor with respect to access to information concerning the composition of, and changes to, the Fund's portfolio.³⁶ Moreover, Nasdaq Rule 5735(g) requires that personnel who make decisions on the Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both the Exchange and FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.³⁷ The

³⁵ See Nasdaq Rule 5735(d)(2)(B)(ii).

³⁶ See *supra* note 9. The Exchange states 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 the 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. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with the Advisers Act and Rule 204A-1 thereunder. 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.

³⁷ The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

Exchange further represents that 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. Moreover, the Exchange states that, prior to the commencement of trading, it will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including the following:

- (1) The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and other exchange-traded securities (including ETFs and preferred stock) and instruments held by the Fund with other markets and other entities that are members of the ISG,³⁸ and FINRA may obtain trading information regarding trading in the Shares and other exchange-traded securities (including ETFs and preferred stock) and instruments held by the Fund from such markets and other entities. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain Variable Rate Debt Instruments, Fixed Rate Debt Instruments, and other debt securities held by the

³⁸ For a list of the current members of ISG, see www.isgportal.org.

Fund reported to FINRA's TRACE. In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities (including ETFs and preferred stock) and instruments held by the Fund from markets and other entities that are members of ISG, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

- (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 and the Disclosed Portfolio 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 purchasing Shares from the Fund for resale to investors deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.
- (5) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Act.³⁹

³⁹ See 17 CFR 240.10A-3.

- (6) The Fund will not invest more than 20% of its net assets in the aggregate in ABS or non-agency MBS. In addition, the Fund will not invest in senior or junior commercial loans.
- (7) The variable and fixed-rate preferred stock in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG, or that are parties to a comprehensive surveillance sharing agreement with the Exchange.
- (8) The shares of ETFs in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG, or that are parties to a comprehensive surveillance sharing agreement with the Exchange. In addition, the Fund will not invest in leveraged ETFs, inverse ETFs, or inverse leveraged ETFs.
- (9) Under normal market conditions, the Fund will satisfy the following requirements, with respect to (i) and (iii) on a continuous basis, and with respect to (ii) and (iv) on a continuous basis measured at the time of purchase: (i) at least 75% of the investments in corporate debt securities shall have a minimum original principal amount outstanding of \$100 million or more; (ii) no Variable Rate Investment (excluding U.S. government securities) will represent more than 30% of the weight of the Variable Rate Debt Instrument component of the Fund's portfolio, and the five most heavily weighted portfolio securities will not in the aggregate account for more than 65% of the weight of the Variable Rate Debt Instrument component of the Fund's portfolio; (iii) the portfolio will include a minimum of 13 non-affiliated issuers; and (iv) portfolio securities that in aggregate account for at least 90% of the weight of the portfolio will be (a) from

issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Exchange Act; (b) from issuers that have a worldwide market value of outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; or (d) exempted securities as defined in Section 3(a)(12) of the Exchange Act.

- (10) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A corporate debt securities deemed illiquid by the Adviser.
- (11) The Fund's investments will be consistent with the Fund's investment objectives. The Fund does not presently intend to engage in any form of borrowing for investment purposes, and will not be operated as a "leveraged ETF," i.e., it will not be operated in a manner designed to seek a multiple or inverse multiple of the performance of an underlying reference index.
- (12) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act,

the Exchange will monitor for compliance with the continued listing requirements.⁴⁰ If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

This order is based on all of the Exchange's representations, including those set forth above and in the Notice, as modified by Amendment No. 3. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 for the Shares to be listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act⁴¹ and Section 11A(a)(1)(C)(iii) of the Act⁴² and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 3

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 3 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

⁴⁰ The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428 (April 7, 2016) (SR-BATS-2016-04). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of a fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

⁴¹ 15 U.S.C. 78f(b)(5).

⁴² 15 U.S.C. 78k-1(a)(1)(C)(iii).

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-NASDAQ-2016-056 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 No. SR-NASDAQ-2016-056. 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 No. SR-NASDAQ-2016-056, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of Amendment No. 3 in the Federal Register. The changes and additional information in Amendment No. 3 helped the Commission to evaluate the Shares' susceptibility to manipulation and whether the listing and trading of the Shares would be consistent with the protection of investors and the public interest. Amendment No. 3 also provided clarifications and additional details to the proposed rule change. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.⁴³

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁴⁴ that the proposed rule change (SR-NASDAQ-2016-056), as modified by Amendment No. 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

Robert W. Errett
Deputy Secretary

⁴³ 15 U.S.C. 78s(b)(2).

⁴⁴ Id.

⁴⁵ 17 CFR 200.30-3(a)(12).

