

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57619; File No. SR-NYSEArca-2008-25)

April 4, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 to Proposed Rule Change and Order Granting Accelerated Approval of Such Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Rules Permitting the Listing and Trading of Managed Fund Shares, Trading Hours and Halts, Listing Fees Applicable to Managed Fund Shares, and the Listing and Trading of Shares of the PowerShares Active AlphaQ Fund, PowerShares Active Alpha Multi-Cap Fund, PowerShares Active Mega-Cap Portfolio, and the PowerShares Active Low Duration Portfolio

I. Introduction

On February 27, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (“NYSE Arca Equities” or “Corporation”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change seeking to: (1) add new NYSE Arca Equities Rule 8.600 to permit the listing and trading, or trading pursuant to unlisted trading privileges (“UTP”), of securities issued by an actively managed, open-end investment management company (“Managed Fund Shares”); (2) list and trade the shares (“Shares”), offered by PowerShares Actively Managed Exchange-Traded Fund Trust (“Trust”), of the PowerShares Active AlphaQ Fund, PowerShares Active Alpha Multi-Cap Fund, PowerShares Active Mega-Cap Portfolio, and the PowerShares Active Low Duration Portfolio (collectively, the “Funds”); (3) amend NYSE Arca Equities Rule 7.34 (Trading Sessions) to reference Managed Fund Shares; and (4) amend its listing fees to include Managed Fund Shares under the term “Derivative Securities Products.” The proposed rule

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

change was published for comment in the Federal Register on March 5, 2008.<sup>3</sup> The Commission received no comments regarding the proposal. On March 31, 2008, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> This order provides notice of, and solicits comments from interested persons regarding, Amendment No. 1 to the proposed rule change and approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Proposal

The Exchange proposes to add new NYSE Arca Equities Rule 8.600 to permit the listing and trading, or trading pursuant to UTP, of Managed Fund Shares, which are securities issued by an actively managed, open-end investment management company. The Exchange also proposes to amend NYSE Arca Equities Rule 7.34 (Trading Sessions) to reference Managed Fund Shares in paragraph (a)(3)(A), relating to hours of the Exchange's Core Trading Session, and paragraph (a)(4)(A), relating to trading halts when trading pursuant to UTP during the Exchange's Opening

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<sup>3</sup> See Securities Exchange Act Release No. 57395 (February 28, 2008), 73 FR 11974 ("Notice").

<sup>4</sup> In Amendment No. 1, the Exchange added Commentary .07 to proposed NYSE Arca Equities Rule 8.600 which would require the following: (1) If the investment adviser to the Investment Company (as defined herein) issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser must erect a "firewall" between such investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to the Investment Company portfolio; and (2) personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio. In addition, the Exchange provided a representation that PowerShares Capital Management LLC, the investment adviser of the Funds, is affiliated with a broker-dealer and has therefore implemented a firewall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. Lastly, the Exchange provided a description of the ethical and fiduciary requirements under the Investment Advisers Act of 1940 ("Advisers Act") and rules thereunder, as they apply to PowerShares Capital Management LLC.

Session.<sup>5</sup> In addition, the Exchange proposes to amend its listing fees by incorporating Managed Fund Shares in the term “Derivative Securities Products.” Finally, pursuant to new NYSE Arca Equities Rule 8.600, the Exchange proposes to list and trade the Shares of the Funds.

#### Proposed Listing Rules for Managed Fund Shares

Under proposed NYSE Arca Equities Rule 8.600(c)(1), a “Managed Fund Share” is a security that: (1) represents an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (2) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (“NAV”); and (3) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV.

Proposed NYSE Arca Equities Rule 8.600(c)(2) defines “Disclosed Portfolio” as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of the NAV at the end of the business day. Proposed NYSE Arca Equities Rule 8.600(c)(3) defines “Portfolio Indicative Value” as the estimated indicative value of a Managed Fund Share based on current information regarding the value of the securities and other assets in the Disclosed Portfolio. Finally, proposed NYSE Arca Equities Rule 8.600(c)(4) defines “Reporting Authority” as, in respect of a

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<sup>5</sup> See NYSE Arca Equities Rule 7.34(a) (setting forth, generally, the three trading sessions on the Exchange: (1) Opening Session, from 4:00 a.m. to 9:30 a.m. Eastern Time or

particular series of Managed Fund Shares, the Corporation,<sup>6</sup> an institution, or a reporting service designated by the Corporation or by the exchange that lists a particular series of Managed Fund Shares (if the Corporation is trading such series pursuant to UTP) as the official source for calculating and reporting information relating to such series, including, but not limited to, the (i) Portfolio Indicative Value, (ii) the Disclosed Portfolio, (iii) the amount of any cash distribution to holders of Managed Fund Shares, (iv) NAV, or (v) other information relating to the issuance, redemption, or trading of Managed Fund Shares. A series of Managed Fund Shares may have more than one Reporting Authority, each having different functions.

Proposed NYSE Arca Equities Rule 8.600(d) sets forth the initial and continued listing criteria applicable to Managed Fund Shares. Proposed NYSE Arca Equities Rule 8.600(d)(1) provides that, for each series of Managed Fund Shares, the Corporation will establish a minimum number of Managed Fund Shares required to be outstanding at the time of commencement of trading. In addition, the Corporation will obtain a representation from the issuer of each series of Managed Fund Shares that the NAV per share for the series will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Proposed NYSE Arca Equities Rule 8.600(d)(2) provides that each series of Managed Fund Shares will be listed and traded subject to application of the following continued listing criteria: (1) the Portfolio Indicative Value for Managed Fund Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the

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“ET”; (2) Core Trading Session, from 9:30 a.m. to 4:00 p.m. ET; and (3) Late Trading Session, from 4:00 p.m. to 8:00 p.m. ET).

<sup>6</sup> The “Corporation” means NYSE Arca Equities. See NYSE Arca Equities Rule 1.1(k) (defining Corporation).

time when the Managed Fund Shares trade on the Corporation; (2) the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time; and (3) 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 the portfolio.

Proposed NYSE Arca Equities Rule 8.600(d)(2)(C) provides that the Corporation will consider the suspension of trading in, or removal from listing of, a series of Managed Fund Shares under any of the following circumstances: (1) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Fund Shares, there are fewer than 50 beneficial holders of the series of Management Fund Shares for 30 or more consecutive trading days; (2) if the value of the Portfolio Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time; (3) if the Investment Company issuing the Managed Fund Shares has failed to file any filings required by the Commission or if the Corporation is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the Investment Company with respect to the series of Managed Fund Shares; or (4) if such other event shall occur or condition exists which, in the opinion of the Corporation, makes further dealings on the Corporation inadvisable.

Proposed NYSE Arca Equities Rule 8.600(d)(2)(D) provides that, if the Portfolio Indicative Value of a series of Managed Fund Shares is not being disseminated as required, the Corporation may halt trading during the day in which the interruption to the dissemination of the Portfolio Indicative Value occurs. If the interruption to the dissemination of the Portfolio Indicative Value persists past the trading day in which it occurred, the Corporation will halt

trading no later than the beginning of the trading day following the interruption. If a series of Managed Fund Shares is trading on the Corporation pursuant to UTP, the Corporation will halt trading in that series as specified in NYSE Arca Equities Rule 7.34(a), as proposed to be amended. In addition, if the Exchange becomes aware that the NAV or the Disclosed Portfolio with respect to a series of Managed Fund Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV or the Disclosed Portfolio is available to all market participants.

Proposed NYSE Arca Equities Rule 8.600(d)(2)(E) provides that, upon termination of an Investment Company, the Corporation requires that Managed Fund Shares issued in connection with such entity be removed from Corporation listing. Proposed NYSE Arca Equities Rule 8.600(d)(2)(F) provides that voting rights shall be as set forth in the applicable Investment Company prospectus. Proposed NYSE Arca Equities Rule 8.600(e) relates to the limitation of Corporation liability.

Proposed Commentary .01 to new NYSE Arca Equities Rule 8.600 provides that the Corporation will file separate proposals under Section 19(b) of the Act before the listing and/or trading of Managed Fund Shares. Proposed Commentary .02 provides that transactions in Managed Fund Shares will occur during the trading hours specified in NYSE Arca Equities Rule 7.34(a), as proposed to be amended. Proposed Commentary .03 provides that the minimum price variation for quoting and entry of orders in Managed Fund Shares is \$0.01. Proposed Commentary .04 provides that the Exchange will implement written surveillance procedures for Managed Fund Shares.

Proposed Commentary .05 to new NYSE Arca Equities Rule 8.600, which is substantially similar to existing Commentary .01(i) to NYSE Arca Equities Rule 5.2(j)(3),

provides that, for Managed Fund Shares based on an international or global portfolio, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 (“1940 Act”) for the series of Managed Fund Shares must state that such series must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933. Proposed Commentary .06 to new NYSE Arca Equities Rule 8.600 , which is substantially similar to existing Commentary .01(h) to NYSE Arca Equities Rule 5.2(j)(3), sets forth certain obligations of ETP Holders<sup>7</sup> with respect to Managed Fund Shares that receive an exemption from certain prospectus delivery requirements under Section 24(d) of the 1940 Act. Lastly, Commentary .07 to new NYSE Arca Equities Rule 8.600 provides that, if the investment adviser of the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser must erect a “firewall” between such investment adviser and broker-dealer with respect to access to information regarding the composition and/or changes to the Investment Company’s portfolio. In addition, proposed Commentary .07 further requires that personnel who make decisions on the Investment Company’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Investment Company’s portfolio. The Exchange states that Commentary .07 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, the proposed Commentary in

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<sup>7</sup> An “ETP Holder” is a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an Equity Trading Permit or “ETP.” An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Act (15 U.S.C. 78o). See NYSE Arca Equities Rule 1.1(m) and (n) (defining ETP and ETP Holder).

connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with current exchange-traded funds.

#### Amendments to NYSE Arca Equities Rule 7.34

The Exchange proposes to amend NYSE Arca Equities Rule 7.34(a)(3)(A) to add Managed Fund Shares to the list of securities for which the Core Trading Session on the Exchange concludes at 4:15 p.m. ET. In addition, the Exchange proposes to amend NYSE Arca Equities Rule 7.34(a)(4)(A) to include Managed Fund Shares under “Derivative Securities Products” in connection with trading halts for trading pursuant to UTP on the Exchange.

#### Amendments to Listing Fees

The Exchange proposes to add Managed Fund Shares to the securities included under the term “Derivative Securities Products,” as defined in the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services.<sup>8</sup>

#### Description of the Funds and the Trust

The Shares will be 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.<sup>9</sup> The Trust currently consists of the four Funds, each a separate, actively managed

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<sup>8</sup> Further descriptions regarding key features of Managed Fund Shares, including information about interests in a registered investment company, exemptive relief under the 1940 Act, intraday trading of Managed Fund Shares, creation and redemption of Managed Fund Shares, Portfolio Disclosure, and Portfolio Indicative Value, among other things, can be found in the Notice. See Notice, supra note 3.

<sup>9</sup> The Exchange states that the Trust is registered under the 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 and under the 1940 Act (File Nos. 333-147622 and 811-22148) (“Registration Statement”). On November 16, 2007 the Trust filed with the Commission on Form 40-6C/A an Amended and Restated Application (“Application”) for an Amended Order under Sections 6(c) and 17(b) of the 1940 Act (File No. 812-

exchange-traded fund. The Exchange represents that: (1) the Funds will not purchase or sell securities in markets outside the United States; and (2) the Shares will conform to the initial and continued listing criteria under proposed NYSE Arca Equities Rule 8.600 and Commentary thereto.<sup>10</sup>

Detailed descriptions of the investment objectives, strategies, and methodologies of the four Funds, management and structure of the Funds, and other relevant information relating to the Shares and Funds can be found in the Notice, the Registration Statement, and/or the Application, as applicable.

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13386-04). See Investment Company Act Release No. 28140 (February 1, 2008), 73 FR 7328 (February 7, 2008) (File No. 812-13386) (providing notice of application for an exemptive order under Section 6 of the 1940 Act).

<sup>10</sup> The Exchange further represents that, for initial and/or continued listing, Managed Fund Shares must also be in compliance with Rule 10A-3 under the Act, as provided by NYSE Arca Equities Rule 5.3. See 17 CFR 240.10A-3. In addition, the Exchange represents that PowerShares Capital Management LLC, the investment adviser for the Funds, is affiliated with a broker-dealer, AIM Distributors, Inc., and has implemented a firewall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. Further, the Exchange represents that the investment adviser and its related personnel are subject to Rule 204A-1 under the Advisers Act, which relates to codes of ethics for investment advisers. Rule 204A-1 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, the Exchange notes that "firewall" procedures, as well as procedures designed to prevent the misuse of non-public information by an investment adviser, must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act (17 CFR 275.206(4)-7) 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 rules thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of such policies and procedures and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering such policies and procedures. See also Section 204A of the Advisers Act (15 U.S.C. 80b-4a) (requiring investment advisers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by such investment adviser or any person associated with such investment adviser).

### Availability of Information

The Funds' Web site ([www.powershares.com](http://www.powershares.com)), which will be publicly available prior to the public offering of the Shares, will include a form of the prospectus for each Fund that may be downloaded. The Web site will include for each Fund additional quantitative information updated on a daily basis, including: (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>11</sup> 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 Core Trading Session, each Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>12</sup>

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](http://www.sec.gov)).

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.

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<sup>11</sup> 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.

<sup>12</sup> Under accounting procedures followed by the Funds, trades made on the prior business day ("T") will be booked and reflected in the NAV on the current business day ("T+1"). 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.

The previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the facilities of the Consolidated Tape Association ("CTA"). In addition, the Portfolio Indicative Value will be disseminated by the Exchange at least every 15 seconds during the Core Trading Session through the facilities of CTA. The NAV of each Fund will normally be determined as of the close of the regular trading session on the New York Stock Exchange LLC (ordinarily 4:00 p.m. ET) on each business day.

#### Trading Halts

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 a Fund.<sup>13</sup> Trading in the Shares of the Funds will be halted if the circuit breaker parameters under NYSE Arca Equities Rule 7.12 are reached. 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. These may include: (1) the extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of a 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 will be subject to proposed NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which trading in the Shares of a Fund may be halted.

#### Trading Rules

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. The

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<sup>13</sup> See Commentary .04 to NYSE Arca Equities Rule 7.12.

Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. ET, in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions).<sup>14</sup> The Exchange states that it has appropriate rules to facilitate transactions in the Shares during all trading sessions.

### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which will include Managed Fund Shares) to monitor trading in the Shares. The Exchange 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. The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and, where appropriate, investigations are opened to review the behavior of all relevant parties for all relevant trading violations. The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliate members of ISG. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually

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<sup>14</sup> See supra note 5.

redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares;<sup>15</sup> (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement and will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. ET each trading day.

### III. Discussion

After careful consideration, 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.<sup>16</sup> In particular, the Commission believes that the proposal is

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<sup>15</sup> NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that the ETP Holder believes would be useful to make a recommendation.

<sup>16</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).

consistent with Section 6(b)(5) of the Act,<sup>17</sup> which requires, among other things, that the rules of a national securities exchange 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.

#### Proposed Listing Rules for Managed Fund Shares

The Commission finds that NYSE Arca's proposal contains adequate rules and procedures to govern the listing and trading of Managed Fund Shares on the Exchange.<sup>18</sup> Prior to listing and/or trading on the Exchange, NYSE Arca must file a separate proposed rule change pursuant to Section 19(b) of the Act for each series of Managed Fund Shares. All such securities listed and/or traded under proposed NYSE Arca Equities Rule 8.600 will be subject to the full panoply of NYSE Arca Equities rules and procedures that currently govern the trading of equity securities on the Exchange.

For the initial listing of each series of Managed Fund Shares under proposed NYSE Arca Equities Rule 8.600(d)(1), the Exchange must establish a minimum number of Managed Fund Shares required to be outstanding at the commencement of trading. In addition, the Exchange must obtain a representation from the issuer of Managed Fund 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.

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<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> The Commission believes that the proposed rules and procedures are adequate with respect to the Fund Shares. However, the Commission notes that other proposed series of Managed Fund Shares may require additional Exchange rules and procedures to govern their listing and trading on the Exchange. For example, in the case of a proposed series of Managed Fund Shares that are based on a portfolio, at least in part, of non-U.S. securities, rules relating to comprehensive surveillance sharing agreements and quantitative initial and continued listing standards may be required.

The Commission believes that the proposed continued listing and trading standards under proposed NYSE Arca Equities Rule 8.600(d)(2) are adequate to ensure transparency of key values and information regarding the securities. For continued listing of each series of Managed Fund Shares, the Portfolio Indicative Value must be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Fund Shares trade on the Exchange. Further, the Disclosed Portfolio must be disseminated at least once daily and made available to all market participants at the same time.

The Commission finds that the Exchange's rules with respect to trading halts under proposed NYSE Arca Equities Rule 8.600(d)(2)(D) should help ensure the availability of key values and information relating to Managed Fund Shares. If the Portfolio Indicative Value is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Portfolio Indicative Value occurs. If the interruption of such value persists past the trading day in which it occurred, the Exchange must halt trading no later than the beginning of the trading day following the interruption.<sup>19</sup> In addition, if the Exchange becomes aware that the NAV or Disclosed Portfolio related to a series of Managed Fund Shares is not being disseminated to all market participants at the same time, the Exchange will halt trading in such series of Managed Fund Shares.<sup>20</sup> Finally, in exercising its discretion to halt or suspend trading in the Shares, the Exchange may consider all relevant factors, including

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<sup>19</sup> Under proposed NYSE Arca Equities Rule 8.600(d)(2)(D), if a series of Managed Fund Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading in that series as specified in NYSE Arca Equities Rule 7.34(a)(4). See NYSE Arca Equities Rule 7.34(a)(4) (setting forth rules regarding trading halts for trading pursuant to UTP of certain derivative securities products).

<sup>20</sup> The Exchange may resume trading in such series of Managed Fund Shares only when the NAV or Disclosed Portfolio is disseminated to all market participants. See proposed NYSE Arca Equities Rule 8.600(d)(2)(D).

the extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of a Fund or whether other unusual conditions or circumstances that are detrimental to the maintenance of a fair and orderly market are present.

The Exchange may also consider the suspension of trading in, or removal from listing of, a series of Managed Fund Shares if: (1) following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Fund Shares, there are fewer than 50 beneficial holders of the series of the Managed Fund Shares for 30 or more consecutive trading days; (2) the value of the Portfolio Indicative Value is no longer calculated or available, or the Disclosed Portfolio is not made available to all market participants at the same time; (3) the Trust has not filed, on a timely basis, any required filings with the Commission, or if the Exchange becomes aware that the Trust is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to or otherwise applicable to the Trust; or (4) such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings of the Managed Fund Shares on the Exchange inadvisable.

The Commission believes that the foregoing requirements of proposed NYSE Arca Equities Rule 8.600 should help to prevent trading when a reasonable degree of transparency cannot be assured and to maintain a fair and orderly market for Managed Fund Shares. The Commission also believes that the proposed listing and trading rules for Managed Fund Shares, many of which track existing Exchange rules relating to Investment Company Units, are reasonably designed to promote a fair and orderly market for such Managed Fund Shares by, among other things, requiring disclosure of information that may be necessary to price Managed

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Fund Shares. The proposed rules also require surveillance procedures,<sup>21</sup> establish trading guidelines,<sup>22</sup> and impose other requirements.<sup>23</sup> In addition, Commentary .07 to proposed NYSE Arca Equities Rule 8.600 requires that: (1) if the investment adviser of the Investment Company is affiliated with a broker-dealer, such investment adviser must erect a “firewall” between such investment adviser and broker-dealer with respect to access to information regarding the composition and/or changes to the Investment Company’s portfolio; and (2) personnel who make decisions on the Investment Company’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Investment Company’s portfolio. Lastly, proposed NYSE Arca Equities Rule 8.600(d)(2)(B)(ii) requires that the Reporting Authority that provides the Disclosed Portfolio 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 the portfolio.

Amendments to NYSE Arca Equities Rule 7.34 and Listing Fees

As proposed, Managed Fund Shares will be: (1) added to the list of securities for which the Core Trading Session on the Exchange concludes at 4:15 p.m. ET; and (2) included under the term “Derivative Securities Products,” as defined in NYSE Arca Equities Rule 7.34(a)(4), in connection with trading halts for trading pursuant to UTP on the Exchange. In addition, Managed Fund Shares will be included under the term “Derivative Securities Products,” as defined in the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services, and, as a result, the Exchange’s listing fees will be applicable to a series of Managed Fund Shares. The

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<sup>21</sup> See Commentary .04 to proposed NYSE Arca Equities Rule 8.600. See also supra note 18.

<sup>22</sup> See Commentaries .02 and .03 to proposed NYSE Arca Equities Rule 8.600.

<sup>23</sup> See, e.g., Commentaries .05 and .06 to proposed NYSE Arca Equities Rule 8.600.

Commission finds that the conforming changes made to the Exchange's rules governing trading hours, trading halts, and listing fees are reasonable and promote transparency of the rules to be imposed with respect to a series of Managed Fund Shares.

Proposal to List and Trade the Shares of the Fund

The Exchange proposes to list and trade the Fund Shares pursuant to proposed NYSE Arca Equities Rule 8.600 and Commentary thereto. The Exchange represents that the Shares will conform to the initial and continued listing criteria under such proposed rule.<sup>24</sup>

The Commission believes that the proposal to list and trade the Shares of the Fund on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>25</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. Quotations and last-sale information for the Shares will be disseminated by means of the facilities of the CTA. In addition, the Portfolio Indicative Value will be disseminated at least every 15 seconds during the Core Trading Session, in accordance with proposed NYSE Arca Equities Rule 8.600(d)(2)(A), and on each business day before commencement of the Core Trading Session, each Fund will disclose on its respective Web site the Disclosed Portfolio that will form the basis for the Funds' calculation of NAV at the end of the business day, which ordinarily occurs at 4:00 p.m. ET. The Funds' Web site will also include for each Fund additional quantitative information updated on a daily basis, including, among other things, daily trading volume, prior reported closing prices, and NAV-related data.

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<sup>24</sup> See supra note 10.

<sup>25</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

Furthermore, the Commission 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 is required to obtain a representation from the Trust, prior to listing, that the NAV per Share for the Funds 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>26</sup> The Exchange may consider the suspension of trading in, or removal from listing of, the Shares if the value of the Portfolio Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time.

Commentary .07 to proposed NYSE Arca Equities Rule 8.600 restricts certain personnel of PowerShares Capital Management LLC with respect to use and dissemination of information concerning the composition and/or changes to the Fund's portfolio and requires the establishment of a "firewall" between PowerShares Capital Management LLC and any affiliated broker-dealers.<sup>27</sup> In addition, proposed NYSE Arca Equities Rule 8.600(d)(2)(B)(ii) requires that the Reporting Authority that provides the Disclosed Portfolio 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 the portfolio.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Shares are equity securities subject to Exchange's rules governing the trading of equity securities.

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<sup>26</sup> See proposed NYSE Arca Equities Rule 8.600(d)(1)(B).

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

- (1) The Shares will conform to the initial and continued listing criteria under proposed NYSE Arca Equities Rule 8.600.
- (2) The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Managed Fund Shares, to monitor trading in the Shares.<sup>28</sup>
- (3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in a Bulletin of the special characteristics and risks associated with trading the Shares, including procedures for purchases and redemptions of Shares, suitability requirements under NYSE Arca Equities Rule 9.2(a), the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated, information regarding the Portfolio Indicative Value, prospectus delivery requirements, and other trading information. In addition, the Bulletin will disclose that the Funds are subject to various fees and expenses, as described in the Registration Statement, and will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. Finally, the Bulletin will disclose that the NAV for the Shares will be calculated after 4:00 p.m. ET each trading day.

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<sup>27</sup> See supra note 10.

<sup>28</sup> See supra note 18.

- (4) The Exchange represents that the Trust is required to comply with Rule 10A-3 under the Act<sup>29</sup> for the initial and continued listing of the Shares, as provided under NYSE Arca Equities Rule 5.3.

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

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the proposed rule change, including whether the proposed rule change, as modified by Amendment No. 1 thereto, 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-NYSEArca-2008-25 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-NYSEArca-2008-25. 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

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<sup>29</sup> 17 CFR 240.10A-3. See *supra* note 10.

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-NYSEArca-2008-25 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval

The Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1 thereto, prior to the thirtieth day after the date of publication of notice of filing of Amendment No. 1 in the Federal Register. In Amendment No. 1, the Exchange provided additional safeguards in Commentary .07 to proposed NYSE Arca Equities Rule 8.600 that relate to restricted access and dissemination of key information regarding the composition of, and changes to, the Investment Company portfolio, including the requirement of "firewalls" to be erected around certain personnel of the investment adviser to the Investment Company, to the extent such investment adviser is a registered broker-dealer or affiliated with a registered broker-dealer, and procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. In addition, the Exchange represented that

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PowerShares Capital Management LLC, the investment adviser of the Funds, has implemented a firewall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund’s portfolio and is already subject to the provisions of applicable rules under the Advisers Act.<sup>30</sup> The Commission notes that Commentary .07 is based on, and substantially similar to, Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3) and Commentary .06 to Amex Rule 1000B.<sup>31</sup> The Commission believes that Amendment No. 1 strengthens the proposal by promoting fair disclosure of Investment Company portfolio information and raises no new regulatory issues. Accordingly, the Commission finds good cause for approving the proposal, as modified by Amendment No. 1 thereto, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>32</sup> that the

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<sup>30</sup> See supra note 10.

<sup>31</sup> See Securities Exchange Act Release No. 57514 (March 17, 2008), 73 FR 15230 (March 21, 2008) (SR-Amex-2008-02) (approving, among other things, the listing standards for Managed Fund Shares, including Commentary .06 to Amex Rule 1000B, which relates to “firewalls” and the protection of information regarding the Investment Company’s portfolio).

<sup>32</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-NYSEArca-2008-25), as modified by Amendment No. 1 thereto, 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>33</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>33</sup> See 17 CFR 200.30-3(a)(12).