

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68158; File No. SR-NYSEArca-2012-101)

November 5, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change to List and Trade Shares of the PowerShares S&P 500 Downside Hedged Portfolio under NYSE Arca Equities Rule 8.600

I. Introduction

On September 6, 2012, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) 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 S&P 500 Downside Hedged Portfolio (“Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on September 24, 2012.³ The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by PowerShares Actively Managed Exchange-Traded Fund Trust (“Trust”),⁴ a statutory trust organized under the laws of the State of Delaware and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 67881 (September 18, 2012), 77 FR 58889 (“Notice”).

⁴ The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On August 14, 2012, the Trust filed with the Commission a post-effective amendment to Form N-1A under the Securities Act of 1933 (“Securities Act”) and under the 1940 Act

registered with the Commission as an open-end management investment company. The investment adviser to the Fund is Invesco PowerShares Capital Management LLC (“Adviser”). The Bank of New York Mellon Corporation is the administrator, custodian, and transfer agent for the Fund, and Invesco Distributors, Inc. is the distributor for the Fund Shares. The Exchange states that the Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund’s portfolio.⁵

The Fund will be an actively managed exchange-traded fund that will seek to achieve positive total returns in rising or falling markets that are not directly correlated to broad equity or fixed income market returns. The Fund will seek to achieve its investment objective by using a quantitative, rules-based strategy designed to provide returns that correspond to the performance of the S&P 500 Dynamic VEQTOR Index (“Benchmark”). The Fund’s Benchmark allocates between equity securities and CBOE Volatility Index futures. The Fund seeks to gain exposure to equity securities contained in the S&P 500 Index, CBOE Volatility Index (“VIX Index”) related instruments (as described in more detail below, “VIX Index Related Instruments”), money market instruments, cash, cash equivalents, and futures contracts that track the S&P 500 Index (“E-mini S&P 500 Futures”).

relating to the Fund (File Nos. 333-147622 and 811-22148) (“Registration Statement”). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 28171 (February 27, 2008) (File No. 812-13386).

⁵ See NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Benchmark, the VIX Index, and the S&P 500 VIX Short Term Futures Index

The Benchmark is comprised of three types of components at any given time: an equity component, represented by the S&P 500 Index; a volatility component, represented by the S&P 500 VIX Short Term Futures Index (“VIX Futures Index”); and cash, represented by the overnight London Interbank Offered Rate.⁶ The VIX Futures Index utilizes the prices of the first and second month futures contracts based on the VIX Index, replicating a position that rolls the nearest month VIX futures contracts to the next month VIX futures contracts on a daily basis in equal fractional amounts.

Following the proprietary formula of Standard & Poor’s (“S&P” or “Index Provider”), under normal circumstances (i.e., times other than when the Benchmark’s stop-loss process is triggered, as described below), the allocation to the VIX Futures Index constitutes between 2.5% and 40% of the Benchmark, with equity securities contained in the S&P 500 Index composing the remainder. The allocation to the VIX Futures Index generally increases when realized volatility and implied volatility are higher, and decreases when realized volatility and implied volatility are lower. With respect to the stop-loss process, in the event losses on the Benchmark over the previous five business days are greater than 2%, the Benchmark moves its entire allocation to cash. Unless the stop-loss is in place, the Benchmark is entirely allocated to a combination of the S&P 500 Index and the VIX Futures Index. While allocations are reviewed daily, these allocations may change on a less frequent basis.

The Benchmark’s allocation to the VIX Futures Index serves as an implied volatility hedge as volatility historically tends to correlate negatively to the performance of the U.S. equity

⁶ As of June 30, 2012, the Benchmark allocation was as follows: 97.5% to the equity component, represented by the S&P 500 Index; 2.5% to the VIX Futures Index; and 0% allocated to cash.

markets (i.e., rapid declines in the performance of the U.S. equity markets generally are associated with particularly high volatility in such markets). “Implied volatility” is a measure of the expected volatility of the S&P 500 Index that is reflected by the value of the VIX Index.

The U.S. Index Committee of the Index Provider maintains the Benchmark.⁷ That Committee meets monthly. At each meeting, the Committee reviews pending corporate actions that may affect Benchmark constituents, statistics comparing the composition of the Benchmark to the market, companies that are being considered as candidates for addition to the Benchmark, and any significant market events. In addition, the Committee may revise the Benchmark’s policy covering rules for selecting companies, treatment of dividends, share counts, or other matters.

The VIX Index is a theoretical calculation and cannot be traded. It is a benchmark index designed to measure the market price of volatility in large cap U.S. stocks over 30 days in the future, and is calculated based on the prices of certain put and call options on the S&P 500 Index. The VIX Index measures the premium paid by investors for certain options linked to the S&P 500 Index. During periods of market instability, the implied level of volatility of the S&P 500 Index typically increases and, consequently, the prices of options linked to the S&P 500 Index typically increase (assuming all other relevant factors remain constant or have negligible changes). This, in turn, causes the level of the VIX Index to increase. The VIX Index historically has had negative correlations to the S&P 500 Index.

⁷ The Index Provider is not a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

Investments

The Fund, in accordance with strategy allocation rules provided by the Index Provider, will invest in a combination of equity securities contained in the S&P 500 Index and that are listed on a U.S. securities exchange; VIX Index Related Instruments; money market instruments; cash; cash equivalents; and E-mini S&P 500 Futures that are listed on the Chicago Mercantile Exchange (“CME”).⁸

The allocation among the Fund’s investments will approximate the allocation among the components of the Benchmark. Accordingly, during periods of low volatility, a greater portion of the Fund’s assets will be invested in equity securities, and during periods of increased volatility, a greater portion of the Fund’s assets will be invested in VIX Index Related Instruments. However, the Fund will be actively managed, and, although the Fund will seek performance comparable to the Benchmark, the Fund may have a higher or lower exposure to any component within the Benchmark at any time.

VIX Index Related Instruments that the Fund will invest in include listed VIX futures contracts contained in the VIX Futures Index or exchange-traded funds (“ETFs”)⁹ and exchange-traded notes (“ETNs”)¹⁰ that are listed on a U.S. securities exchange and provide exposure to the VIX Index. All of the VIX Index Related Instruments will be listed on a U.S. exchange.

⁸ The Fund will be “non-diversified” under the 1940 Act and may invest more of its assets in fewer issuers than “diversified” funds. The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

⁹ For purposes of this proposed rule change, ETFs are securities registered under the 1940 Act such as those listed and traded on the Exchange under NYSE Arca Equities Rules 5.2(j)(3), 8.100, and 8.600.

¹⁰ For purposes of this proposed rule change, ETNs are securities registered under the Securities Act such as those listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(6).

Futures contracts on the VIX Index have expirations ranging from the near month consecutively out to the tenth month. Futures on the VIX Index provide investors the ability to invest in forward market volatility based on their view of the future direction or movement of the VIX Index. Because the VIX Index is not a tangible item that can be purchased and sold directly, a futures contract on the VIX Index provides for the payment and receipt of cash based on the level of the VIX Index at settlement or liquidation of the contract.

The Fund may invest a portion of its assets in high-quality money market instruments, cash, and cash equivalents to provide liquidity, to collateralize its futures contracts investments, or to track the Benchmark during times when the Benchmark moves its entire allocation to cash. The instruments in which the Fund may invest include: (i) short-term obligations issued by the U.S. Government;¹¹ (ii) short-term negotiable obligations of commercial banks, fixed time deposits, and bankers' acceptances of U.S. and foreign banks and similar institutions; (iii) commercial paper rated at the date of purchase "Prime-1" by Moody's Investors Service, Inc., or "A-1+" or "A-1" by S&P, or has a similar rating from a comparable rating agency, or, if unrated, of comparable quality as determined by the Adviser; and (iv) money market mutual funds.

The Fund also may invest in E-mini S&P 500 Futures that are listed on the CME. E-mini S&P 500 Futures are futures contracts that track the S&P 500 Index. They are substantially similar to traditional futures contracts on the S&P 500 Index, except that the notional value of E-mini S&P 500 Futures are one-fifth the size of their larger counterpart futures contracts.

¹¹ The Fund may invest in short-term obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities, including bills, notes, and bonds issued by the U.S. Treasury, as well as "stripped" or "zero coupon" U.S. Treasury obligations representing future interest or principal payments on U.S. Treasury notes or bonds.

The Subsidiary

The Fund may gain exposure to the VIX Index futures markets through investments in a subsidiary organized in the Cayman Islands (“Subsidiary”). Should the Fund invest in the Subsidiary, that investment may not exceed 25% of the Fund’s total assets at the end of each tax year quarter. The Subsidiary would be wholly-owned and controlled by the Fund, and its investments would be consolidated into the Fund’s financial statements. The Fund’s and Subsidiary’s investments would be disclosed on the Fund’s website on a daily basis. Should the Fund invest in the Subsidiary, it would be expected to provide the Fund with exposure to investment returns from VIX Index futures contracts within the limits of the federal tax requirements applicable to investment companies, such as the Fund.

The Subsidiary would be able to invest in VIX Index futures, as well as other investments that would serve as margin or collateral or otherwise support the Subsidiary’s VIX Index futures positions. The Subsidiary would be subject to the same general investment policies and restrictions as the Fund, except that, unlike the Fund (which is subject to Rule 4.5 of the Commodity Exchange Act (“CEA”)), the Subsidiary would be able to invest without limitation in VIX Index futures and may use leveraged investment techniques. Otherwise, references to the investment strategies of the Fund for non-equity investments include the investment strategies of the Subsidiary.

The Fund may utilize the Subsidiary, but is not required to do so. If it is utilized, the Subsidiary will not be registered under the 1940 Act. The Fund, as the sole shareholder of the Subsidiary, will not have the protections offered to investors in registered investment companies. However, because the Fund wholly owns and controls the Subsidiary, and the Fund and the Subsidiary will be managed by the Adviser, it is unlikely that the Subsidiary will take action

contrary to the interests of the Fund or the Fund's shareholders. The Board of Trustees of the Trust ("Board") will have oversight responsibility for the investment activities of the Fund, including its investment in the Subsidiary, and the Fund's role as the sole shareholder of the Subsidiary. Also, in managing the Subsidiary's portfolio, the Adviser will be subject to the same investment restrictions and operational guidelines that apply to the management of the Fund.

Other Investments

In addition to the VIX Index futures contracts and E-mini S&P 500 Futures that are part of its primary investments, the Fund may enter into other U.S.-listed futures contracts on the S&P 500 Index. The Fund will not use futures for speculative purposes. The Fund will only enter into futures contracts that are traded on U.S. exchanges.

The Fund may invest in stock index contracts, in addition to the E-mini S&P 500 Futures. Stock index contracts are futures based on indices that reflect the market value of common stock of the firms included in the indices. The Fund may enter into U.S.-listed futures contracts to purchase security indices when the Adviser anticipates purchasing the underlying securities and believes prices will rise before the purchase will be made.

To the extent the Fund uses futures it will do so only in accordance with Rule 4.5 of the CEA.¹² Under recently adopted amendments to Rule 4.5, an investment adviser of a registered investment company may claim exclusion from registration as a commodity pool operator ("CPO") only if the registered investment company it advises uses futures contracts solely for "bona fide hedging purposes" or limits its use of futures contracts for non-bona fide hedging purposes in specified ways. Because the Fund does not expect to use futures contracts solely for

¹² The Trust, on behalf of the Fund, has filed a notice of eligibility for exclusion from the definition of the term "commodity pool operator" in accordance with Rule 4.5 of the CEA so that the Fund is not subject to registration or regulation as a CPO under the CEA.

“bona fide hedging purposes,” effective December 31, 2012, the Fund will be subject to rules that will require it to limit its use of positions in futures contracts in accordance with the requirements of amended Rule 4.5, unless it otherwise complies with CPO regulation.

The Fund may enter into repurchase agreements, which are agreements pursuant to which securities are acquired by the Fund from a third party with the understanding that they will be repurchased by the seller at a fixed price on an agreed date. These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest.

Repurchase agreements may be characterized as loans secured by the underlying securities. The Fund may enter into repurchase agreements with: (i) member banks of the Federal Reserve System having total assets in excess of \$500 million; and (ii) securities dealers (“Qualified Institutions”). The Adviser will monitor the continued creditworthiness of Qualified Institutions.

The Fund may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date, and interest payment and have the characteristics of borrowing. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date.

In addition to the ETFs and ETNs that are listed on U.S. exchanges and provide exposure to the VIX Index, the Fund may invest in the securities of other investment companies (including money market funds) to the extent permitted under the 1940 Act. The Fund also may purchase warrants.

The Fund does not expect to invest in options or enter into swap agreements, including credit default swaps, but may do so if such investments are in the best interests of the Fund’s shareholders.

Investment Limitations

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The Fund will not invest in equities that are traded over-the-counter ("OTC") or equities listed on a non-U.S. exchange, or enter into futures that are not traded on a U.S. exchange.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including 144A Securities. 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 and other illiquid assets.

The Fund may not concentrate its investments (i.e., invest more than 25% of the value of its total assets in securities of issuers in any one industry or group of industries). This restriction does not apply to obligations issued or guaranteed by the U.S. Government, its agencies, or instrumentalities. The Fund intends to qualify for and to elect to be treated as a separate regulated investment company under Subchapter M of the Internal Revenue Code.¹³

Additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, net asset value ("NAV"), fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, is included in the Notice and Registration Statement, as applicable.¹⁴

¹³ See 26 U.S.C. 851.

¹⁴ See Notice and Registration Statement, supra notes 3 and 4, respectively.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act¹⁵ and the rules and regulations thereunder applicable to a national securities exchange.¹⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁷ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹⁸ which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3),

¹⁵ 15 U.S.C. 78f.

¹⁶ 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).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 15 U.S.C. 78k-1(a)(1)(C)(iii).

will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.¹⁹ On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), held by the Fund and the Subsidiary that will form the basis for the Fund's calculation of NAV at the end of the business day.²⁰ The NAV of the Fund will be determined at the close of regular trading (ordinarily 4:00 p.m. Eastern Time) every day the New York Stock Exchange is open. 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. The intra-day, closing and settlement prices of the portfolio investments (e.g., futures contracts, equity securities, ETFs, and ETNs) are also readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The Fund's website will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

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

¹⁹ According to the Exchange, several major market data vendors widely disseminate Portfolio Indicative Values taken from CTA or other data feeds.

²⁰ On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Fund and the Subsidiary, if applicable, the following information on the Fund's website: ticker symbol (if applicable); name of security and financial instrument; number of shares or dollar value of each security and financial instrument held in the portfolio; and percentage weighting of the security and financial instrument in the portfolio. The website information will be publicly available at no charge.

Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV 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.²¹ In addition, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²² Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.²³ All equity securities, ETFs, and ETNs in which the Fund invests will be listed on a U.S. securities exchange. The Exchange may obtain information via the Intermarket Surveillance Group (“ISG”) from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange could obtain information from the U.S. futures exchanges, all of which are ISG members, on which futures held by the Fund are listed and traded. The

²¹ See NYSE Arca Equities Rule 8.600(d)(1)(B).

²² See NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been 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.

²³ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that the Adviser is affiliated with a broker-dealer, and the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.²⁴

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:

- (1) The Shares will be subject to NYSE Arca Equities Rule 8.600, 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) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading

²⁴ See supra note 5. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its 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 Rule 204A-1 under the Advisers Act. 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.

of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

- (4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (“ETP”) Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) 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; (c) 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; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) 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 (f) trading information.
- (5) For initial and/or continued listing, the Fund must be in compliance with Rule 10A-3 under the Exchange Act,²⁵ as provided by NYSE Arca Equities Rule 5.3.
- (6) All of the equities and VIX Index Related Instruments will be listed on a U.S. exchange. The Fund will not enter into futures that are not traded on a U.S. exchange. In addition, the Fund does not expect to invest in options or enter into swap agreements, including credit default swaps, but may do so if such investments are in the best interests of the Fund’s shareholders. The Fund’s

²⁵ 17 CFR 240.10A-3.

investments will be consistent with its investment objective and will not be used to enhance leverage.

- (7) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities.
- (8) Should the Fund invest in the Subsidiary, that investment may not exceed 25% of the Fund's total assets at the end of each tax year quarter.
- (9) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.²⁶

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act²⁷ and the rules and regulations thereunder applicable to a national securities exchange.

²⁶ The Commission notes that it does not regulate the market for futures in which the Fund plans to take positions, which is the responsibility of the Commodity Futures Trading Commission ("CFTC"). The CFTC has the authority to set limits on the positions that any person may take in futures. These limits may be directly set by the CFTC or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

²⁷ 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-NYSEArca-2012-101) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Kevin M. O'Neill
Deputy Secretary

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).