

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70570; File No. SR-NYSEArca-2013-97)

September 30, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Reflecting Changes to the Means of Achieving the Investment Objective Applicable to Shares of the PowerShares China A-Share Portfolio

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 19, 2013, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to reflect changes to the means of achieving the investment objective applicable to shares of the PowerShares China A-Share Portfolio (the “Fund”). The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Commission has approved listing and trading on the Exchange of shares (“Shares”) of the PowerShares China A-Share Portfolio, a series of PowerShares Actively Managed Exchange-Traded Trust (the “Trust”),<sup>4</sup> under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. Shares of the Fund have not commenced listing and trading on the Exchange.

The Shares are offered by the Trust, a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.<sup>5</sup> The investment advisor to the Fund will be Invesco PowerShares Capital Management LLC (the “Adviser”).

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<sup>4</sup> See Securities Exchange Act Release No. 69915 (July 2, 2013), 78 FR 41145 (July 9, 2013) (SR-NYSEArca-2013-56) (“Prior Order”). See also Securities Exchange Act Release No. 69634 (May 23, 2013), 78 FR 32487 (May 30, 2013) (SR-NYSEArca-2013-56) (“Prior Notice,” and together with the Prior Order, the “Prior Release”).

<sup>5</sup> The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”). On August 30, 2013, the Trust filed with the Commission a post-effective amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”), and under the 1940 Act relating to the Fund (File Nos. 333-147622 and 811-22148) (“Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the 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) (“Exemptive Order”).

In this proposed rule change, the Exchange proposes to reflect changes to the description of the measures the Adviser will utilize to implement the Fund’s investment objective, as described below.<sup>6</sup>

First, the Prior Release stated that, under normal circumstances,<sup>7</sup> the Fund generally will invest at least 80% of its net assets in a combination of investments whose collective performance is designed to correspond to the performance of the FTSE China A50 Index (the “Benchmark”). The Adviser now represents that, rather than being designed to correspond to the performance of the Benchmark, the Fund will seek to achieve its investment objective by providing exposure to the China “A-Shares” market using a quantitative, rules-based investment strategy. The Fund will be actively managed by the Adviser and will not be obligated to invest in the instruments included in the Benchmark or to track the performance of the Benchmark or of any index. However, although the Fund will seek to exceed the performance of the Benchmark, there can be no assurance that the Fund will do so at any time.

Second, the Prior Release stated that the Trust has filed a notice of eligibility for exclusion from the definition of the term “commodity pool operator” (“CPO”) in accordance with Rule 4.5 of the Commodity Exchange Act (“CEA”).<sup>8</sup> As stated in the Prior Release, under amendments to Rule 4.5 adopted in February 2012, an investment adviser of a registered

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<sup>6</sup> The changes described herein will be effective contingent upon effectiveness of the Trust’s most recent post-effective amendment to its Registration Statement. See note 5, supra. The Adviser represents that the Adviser will not implement the changes described herein until the instant proposed rule change is operative.

<sup>7</sup> The term “under normal circumstances” includes, but is not limited to, the absence of: extreme volatility or trading halts in the equity markets or the financial 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.

<sup>8</sup> 7 U.S.C. 1.

investment company may claim exclusion from registration as a 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. The Prior Release stated that, because the Fund did not expect to use futures contracts solely for “bona fide hedging purposes,” the Fund would be subject to rules that would require it to limit its use of positions in futures contracts in accordance with the requirements of amended Rule 4.5 unless the Adviser otherwise complies with CPO regulation. The Adviser now represents that, because the Fund does not expect to use futures contracts solely for “bona fide hedging purposes,” nor limit its use of positions in futures contracts in accordance with the requirements of amended Rule 4.5, the Fund is unable to rely on the exclusion from amended Rule 4.5, and therefore will be subjected to regulation under the CEA and Commodity Futures Trading Commission (“CFTC”) rules as a commodity pool. As noted in the Prior Release, the Adviser is registered as a CPO.

Third, the Prior Release stated that, according to the Registration Statement, the Fund may seek to gain exposure to the A-Shares market through investments in a subsidiary organized in the Cayman Islands (“Subsidiary”) that in turn would make investments in futures contracts that provide exposure to China A-Shares. The Adviser now represents that the Trust will not utilize a Subsidiary and that the Fund will make its investments directly. Therefore, all references to the Subsidiary in the Prior Release are of no effect.

Fourth, the Prior Release stated that the Fund may enter into repurchase and reverse repurchase agreements. The Adviser now represents that the Fund will not enter into such agreements. Therefore, all references in the Prior Release to the Fund’s investments in repurchase and reverse repurchase agreements are of no effect.

The Adviser represents that there is no change to the Fund’s investment objective. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

Except for the changes noted above, all other facts presented and representations made in the Prior Release remain unchanged.

All terms referenced but not defined herein are defined in the Prior Release.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>9</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, and is designed to promote just and equitable principles of trade and to protect investors and the public interest, in that the Adviser represents that there is no change to the Fund’s investment objective and the Adviser is clarifying that the Fund will seek to achieve its investment objective by providing exposure to the China “A-Shares” market, rather than being designed to correspond to the performance of the Benchmark. As an actively-managed fund, the Fund will not be obligated to invest in the instruments included in the Benchmark or to track the performance of the Benchmark or of any index and the Fund will seek to exceed the performance of the Benchmark. These changes are intended to conform more closely with requirements of the 1940 Act, as a result of guidance from the Commission staff.

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<sup>9</sup> 15 U.S.C. 78f(b)(5).

This change is consistent with the operation of other issues of Managed Fund Shares traded on the Exchange that seek to outperform rather than track a benchmark index, as is the case for index funds. The Adviser also is clarifying the representation in the Prior Release regarding regulations applicable to CPOs to clarify that the Trust is unable to rely on the exclusion from amended Rule 4.5 and therefore will be subjected to regulation under the CEA and CFTC rules as a commodity pool. The Adviser is registered as a CPO. The Adviser also is clarifying that, in seeking to achieve its investment objective, the Trust will not utilize a Subsidiary and that the Fund will make its investments directly, and the Fund will not enter into repurchase or reverse repurchase agreements. The Exchange notes that the advisers for other issues of actively managed funds may be subject to regulation under the CEA and CFTC rules as a commodity pool. In addition, other issues of actively managed funds do not make investments through a subsidiary and do not invest in repurchase and reverse repurchase agreements. The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that the Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. The Adviser represents that there is no change to the Fund's investment objective. Except for the changes noted above, all other representations made in the Prior Release remain unchanged.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will accommodate Exchange listing and trading of an issue of Managed Fund Shares that seeks to exceed the performance of a benchmark of non-U.S. securities and will enhance competition among issues of Managed Fund Shares that invest in equity securities. The

changes from the Prior Release described above are consistent with other issues of actively managed funds, and the strategy utilized by the Fund is different from other issues of Managed Fund Shares traded on the Exchange and will provide another choice for investors investing in Managed Fund Shares.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay to accommodate investments by the Fund and Exchange trading of the Shares of the Fund without delay. The Commission believes that waiving the 30-day operative delay is consistent with the

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

protection of investors and the public interest.<sup>12</sup> As stated in the proposal, the proposed changes do not alter the Fund's investment objective. Under the proposal, the Fund will seek to achieve its investment objective by providing exposure to the China A-Shares market, rather than being designed to correspond to the performance of the Benchmark. In addition, the Fund will not be obligated to invest in the instruments included in the Benchmark or to track the performance of the Benchmark or of any index, and will seek to exceed the performance of the Benchmark. Further, the proposal provides that in seeking to achieve its investment objective, the Trust will not utilize a Subsidiary and that the Fund will make its investments directly. As proposed, the Fund also will not enter into repurchase or reverse repurchase agreements. Moreover, the proposal states that the Trust is unable to rely on the exclusion from amended CFTC Rule 4.5 and will be subject to regulation under the CEA and CFTC rules as a commodity pool. The proposal reiterates that the Adviser is registered as a CPO. Because the proposed changes do not alter the Fund's investment objective and conforms the Fund more closely with the requirements of the 1940 Act, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

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<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2013-97 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEArca-2013-97. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit 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-2013-97 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).