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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57389; File No. SR-NYSEArca-2008-06]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to the Dissemination of the Index Value for Equity Index-Linked Securities

February 27, 2008.

#### I. Introduction

On January 11, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") 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 relating to the dissemination of the index value for Equity Index-Linked Securities.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on February 11, 2008 for a 15-day comment period.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

#### II. Description of the Proposal

NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(c)(ii) currently provides that the Exchange will commence delisting or removal proceedings of an issue of Equity Index-Linked Securities (unless the Commission has approved continued trading of such Securities) if, among other circumstances, the value of the index or composite value of the indexes underlying such issue is no longer calculated or widely disseminated on at least a 15-second basis. The Exchange proposes to amend

NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(c)(ii) to distinguish between indexes consisting solely of U.S. equity securities and those consisting of foreign securities or a combination of U.S. and foreign equity securities. The proposed amendment provides that the Exchange will commence delisting or removal proceedings if the underlying index value or composite index value is no longer calculated or widely disseminated: (1) On at least a 15-second basis with respect to an index or indexes containing only securities listed on a national securities exchange;<sup>5</sup> or (2) on at least a 60-second basis with respect to an index or indexes containing foreign country securities. If the official index value does not change during some or all of the period when trading is occurring on the NYSE Arca Marketplace<sup>6</sup> (for example, for indexes of foreign country securities, there may be time zone differences or holidays in the countries where such indexes' component stocks trade), then the last calculated official index value must remain available throughout NYSE Arca Marketplace trading hours. The Exchange seeks to conform the index dissemination requirements for Equity Index-Linked Securities to those for Investment Company Units, which include exchange-traded funds or "ETFs," under NYSE Arca Equities Rule 5.2(j)(3).

#### III. Discussion and Commission's Findings

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>7</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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 opportunities to invest in derivative securities products based not only on U.S. equity securities, but also on an international or global index of equity securities, provide additional choices to accommodate particular investment needs and objectives, to the benefit of investors. With respect to the dissemination of the value of an index that is comprised, at least in part, of non-U.S. equity component securities, the proposed 60-second standard reflects limitations, in some instances, on the frequency of intra-day trading information with respect to such foreign securities and that, in many cases, trading hours for overseas markets overlap only in part, or not at all, with NYSE Arca Marketplace trading hours.<sup>9</sup> In addition, if an index or portfolio value does not change for some of the time that the derivative securities product trades on the Exchange, the last official calculated value must remain available throughout Exchange trading hours. The Commission believes that such 60-second standard relating to the dissemination of the value of an index composed, at least in part, of foreign equity securities should apply to Equity Index-Linked Securities as well as ETFs and finds that NYSE Arca's proposal is consistent with the Exchange Act on the same basis that it approved the other exchanges' generic listing standards for ETFs based on international or global indexes.<sup>10</sup>

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the proposal is substantially similar to previously approved listing standards for Investment Company Units under NYSE Arca Equities Rule 5.2(j)(3)<sup>11</sup> and for ETFs listed and traded pursuant to similar rules of other national securities exchanges.<sup>12</sup> The Commission believes that accelerated approval of the proposed rule change,

<sup>9</sup> See Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR-NYSEArca-2006-86) (approving generic listing standards for ETFs based on international or global indexes).

<sup>10</sup> See, e.g., Securities Exchange Act Release Nos. 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR-NASDAQ-2006-050); 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR-NYSE-2006-101); and 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR-Amex-2006-78).

<sup>11</sup> See *supra* note 9. See also Commentary .01(b)(2) to NYSE Arca Equities Rule 5.2(j)(3).

<sup>12</sup> See *supra* note 10.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities. See NYSE Arca Equities Rule 5.2(j)(6).

<sup>4</sup> See Securities Exchange Act Release No. 57273 (February 5, 2008), 73 FR 7774.

<sup>5</sup> American Depositary Shares and common shares of foreign issuers listed on U.S. national securities exchanges included in an index or indexes would be subject to the 15-second dissemination requirement.

<sup>6</sup> See NYSE Arca Equities Rule 1.1(e) (defining NYSE Arca Marketplace).

<sup>7</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).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

which clarifies the dissemination of the value of the index underlying an issue of Equity Index-Linked Securities, should promote the continued listing and trading of Equity Index-Linked Securities to the benefit of investors. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change on an accelerated basis.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NYSEArca-2008-06) 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>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57395; File No. SR-NYSEArca-2008-25]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to 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

February 28, 2008.

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> notice is hereby given that on February 27, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (“NYSE Arca Equities”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. 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: (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”) 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 text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <http://www.nyse.com>.

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

In its filing with the Commission, the Exchange 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 these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

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 Session. 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 particular series of Managed Fund Shares, the Corporation,<sup>3</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

<sup>3</sup> The “Corporation” means NYSE Arca Equities. See NYSE Arca Equities Rule 1.1(k) (defining Corporation).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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