

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58392; File No. SR-NASDAQ-2008-019]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change as Modified by Amendment No. 1 Thereto To Remove From the Nasdaq Rules Fee Provisions Relating to Nasdaq's Mutual Fund Quotation Service

August 20, 2008.

On March 12, 2008, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to remove from the Nasdaq rulebook references to the fees charged by Nasdaq in connection with its Mutual Fund Quotation Service ("MFQS"). On July 3, 2008, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on July 14, 2008.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

Through the MFQS, Nasdaq collects price data for mutual funds, money market funds, and unit investment trusts.⁴ This price data includes information such as net asset value, offer/market price, and capital gains distributions.⁵ Price data may be submitted to Nasdaq by either the fund itself, or by a third-party service facilitator, such as a pricing agent.⁶ This pricing data is then transmitted to print media and/or market data vendors, depending on the level of service for which the fund qualifies.⁷ The data interface for the MFQS is separate from the Nasdaq trading system interface.⁸

Nasdaq Rule 7033 (a) through (d) sets forth the fees that Nasdaq charges money market funds, mutual funds, and unit investment trusts for participating in the MFQS. Nasdaq Rules 7019(b) and 7033(e) set forth the distribution and

access fees that Nasdaq charges for MFQS information, which is transmitted via the Mutual Funds Dissemination Service ("MFDS"). Nasdaq proposes to delete Rule 7033 in its entirety from its rulebook, and the portion of Rule 7019(b) that relates to MFQS fees.

The Commission has carefully reviewed the proposed rule change and 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.⁹ The Commission believes that it is reasonable for Nasdaq to delete the portion of Rule 7019(b) that relates to MFQS fees, and Rule 7033 in its entirety as, based on representations made by Nasdaq, neither the MFQS nor the MFDS appear to be facilities of a national securities exchange within the meaning of the Act. Removing these provisions is thus consistent with the requirements of Section 6(b) of the Act,¹⁰ as the fees charged by Nasdaq in connection with the MFQS do not fall within the scope of the rules that must be filed with the Commission pursuant to Section 19(b)(1) of the Act¹¹ and Rule 19b-4 thereunder.¹²

If, however, Nasdaq were to propose to tie pricing for the MFQS or the MFDS to an exchange activity, or otherwise modify the MFQS or MFDS such that they fall within the definition of facility of an exchange in the Act,¹³ Nasdaq would have to file a proposed rule change with the Commission.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASDAQ-2008-019), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58395; File No. SR-NYSEArca-2008-85]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. Relating to Listing and Trading of PowerShares Active U.S. Real Estate Fund

August 20, 2008.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Exchange Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 11, 2008, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been 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

NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities" or the "Corporation"), proposes to list and trade the following under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): the PowerShares Active U.S. Real Estate Fund. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office 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 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 parts of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58102 (July 3, 2008), 73 FR 40410.

⁴ See MFQS User Guide at www.nasdaqtrader.com.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ See e-mail from Alex Kogan, Associate General Counsel, Nasdaq, to Andrew Madar, Attorney-Advisor, Commission, dated August 15, 2008.

⁹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78s(b)(1).

¹² 17 CFR 240.19b-4.

¹³ See 15 U.S.C. 78c(a)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

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

1. Purpose

The Exchange proposes to list and trade the following Managed Fund Shares⁴ ("Shares") under NYSE Arca Equities Rule 8.600: The PowerShares Active U.S. Real Estate Fund ("Fund").⁵ The Shares will be offered by PowerShares Actively Managed Exchange-Traded Fund Trust (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.⁶

The Shares will conform to the initial and continued listing criteria under Rule 8.600. The Fund will not purchase or sell securities in markets outside the U.S. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3⁷ under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3.

Description of the Fund

Invesco PowerShares Capital Management LLC (the "Adviser") is the investment adviser for the Fund and is registered as an "investment adviser" under the Investment Advisers Act of 1940 (the "Advisers Act").⁸ Invesco

⁴ A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

⁵ The Commission previously approved listing and trading on the Exchange of the following PowerShares actively managed funds under Rule 8.600: PowerShares Active AlphaQ Fund, the PowerShares Active Alpha Multi-Cap Fund, the PowerShares Active Mega-Cap Portfolio and the PowerShares Active Low Duration Portfolio. See Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25).

⁶ The Trust is registered under the 1940 Act. On June 26, 2008, the Trust filed with the Commission a Registration Statement for the Fund on Form N-1A under the Securities Act of 1933, as amended, (15 U.S.C. 77a), 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 herein is based on the Registration Statement.

⁷ 17 CFR 240.10A-3.

⁸ 15 U.S.C. 80b-1. The Exchange represents that the Adviser and its related personnel, are subject to Advisers Act Rule 204A-1. This Rule specifically

Institutional (N.A.), Inc. ("Invesco Institutional") is the Fund's primary investment sub-adviser and is also registered as an "investment adviser" under the Advisers Act. Invesco Aim Distributors, Inc. (the "Distributor") serves as the principal underwriter and distributor for the Fund. The Adviser is affiliated with the Distributor, a broker-dealer. As required by NYSE Arca Equities Rule 8.600, Commentary .07, the Exchange represents that the Adviser has implemented a "fire wall" with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio.

According to the Registration Statement, the Fund has an investment objective of high total return through growth of capital and current income. It seeks to achieve its investment objective by investing, under normal market conditions, at least 80% of its assets in securities of companies that are principally engaged in the U.S. real estate industry. A company is considered to be principally engaged in the U.S. real estate industry if (i) it derives 50% of its revenues or profits from the ownership, leasing, construction, financing or sale of U.S. real estate; or (ii) it has at least 50% of the value of its assets invested in U.S. real estate. The Fund plans to invest principally in equity real estate investment trusts ("REITs"). Equity REITs pool investors' funds for investments primarily in real estate properties or real estate-related loans

requires the adoption of a code of ethics by an investment adviser to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A-1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer ("CCO") or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment adviser to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. 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.

(such as mortgages). The Fund may also invest in real estate operating companies ("REOCs"), as well as securities of other companies principally engaged in the U.S. real estate industry. REOCs are similar to REITs, except that REOCs reinvest their earnings into the business, rather than distributing them to unitholders like REITs. The 80% investment policy is non-fundamental and requires 60 days' prior written notice to shareholders before it can be changed.

In constructing the portfolio, the sub-advisers (as described in the Registration Statement) analyze quantitative and statistical metrics to identify attractively priced securities. The security and portfolio evaluation process is generally conducted monthly. The sub-advisers will consider selling or reducing a security position if (i) The relative attractiveness of a security falls below desired levels; (ii) a particular security's risk/return profile changes significantly; or (iii) a more attractive investment opportunity is identified.

Creations and redemptions of Shares occur in large specified blocks of Shares, referred to as "Creation Units". The Creation Unit size for the Fund is 50,000 Shares.

The NAV of the Fund will normally be determined as of the close of the regular trading session on the NYSE (ordinarily 4 p.m. Eastern Time) on each business day.

Availability of Information

The Fund's Web site (<http://www.powershares.com>), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (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"),⁹ 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 trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its

⁹ The Bid/Ask Price of the Fund is determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and their service providers.

Web site the Disclosed Portfolio as defined in proposed Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.¹⁰ The Web site information will be publicly available at no charge.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the 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 at <http://www.sec.gov>.

Information regarding market price and trading volume of the Shares is and 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 will be published daily in the financial section of newspapers. 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), will be disseminated by the Exchange at least every 15 seconds during the Core Trading Session through the facilities of CTA. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of a Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

For more information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes, see the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Initial and Continued Listing Criteria

The Fund will be subject to the initial and continued listing criteria of NYSE Arca Equities Rule 8.600(d). The Exchange has established that a

¹⁰ Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund 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.

minimum of 100,000 Shares will be required to be outstanding at the time of commencement of trading on the Exchange. In addition, the Exchange will obtain a representation from the Fund 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.

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 the Fund.¹¹ 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. 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 the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the 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. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be \$0.01.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which 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 and applicable federal securities laws.

¹¹ See NYSE Arca Equities Rule 7.12, Commentary .04.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, 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 of the ISG.¹² 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 redeemable); (2) NYSE Arca Equities Rule 9.2(a),¹³ 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; (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. The Bulletin will discuss any exemptive, no-action,

¹² For a list of the current members of ISG, see <http://www.isgportal.org>.

¹³ 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. See Securities Exchange Act Release No. 54026 (June 21, 2006), 71 FR 36850 (June 28, 2006) (SR-PCX-2005-115).

and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)¹⁴ 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 will facilitate the listing and trading of an additional type of actively managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

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 Exchange Act.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register**.¹⁵ The Commission

is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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. Please include File Number SR-NYSEArca-2008-85 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NYSEArca-2008-85. 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 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 a.m. and 3 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-2008-85 and

should be submitted on or before September 10, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58396; File No. SR-NYSEArca-2008-86]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing of the WisdomTree Dreyfus Emerging Markets Fund

August 20, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 11, 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 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 list and trade the shares of the following fund of the WisdomTree Trust (the "Trust") under NYSE Arca Equities Rule 8.600 (Managed Fund Shares): WisdomTree Dreyfus Emerging Markets Fund ("Fund"). The shares of the Fund are collectively referred to herein as the "Shares." The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and 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, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change and discussed

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ E-mail from Michael Cavalier, Associate General Counsel, NYSE Euronext, to Edward Cho

and Christopher Chow, Special Counsels, Commission, dated August 13, 2008.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.