

## 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> This price data includes information such as net asset value, offer/market price, and capital gains distributions.<sup>5</sup> Price data may be submitted to Nasdaq by either the fund itself, or by a third-party service facilitator, such as a pricing agent.<sup>6</sup> 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.<sup>7</sup> The data interface for the MFQS is separate from the Nasdaq trading system interface.<sup>8</sup>

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.<sup>9</sup> 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,<sup>10</sup> 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 Act<sup>11</sup> and Rule 19b-4 thereunder.<sup>12</sup>

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,<sup>13</sup> 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.<sup>14</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-19784 Filed 8-25-08; 8:45 am]

**BILLING CODE 8010-01-P**

## 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)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Exchange Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> 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.

<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.

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

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

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

<sup>4</sup> See MFQS User Guide at [www.nasdaqtrader.com](http://www.nasdaqtrader.com).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

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

<sup>9</sup> 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).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>12</sup> 17 CFR 240.19b-4.

<sup>13</sup> See 15 U.S.C. 78c(a)(2).

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