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

Written comments were neither solicited nor received.

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

The foregoing change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act. 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

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 email to rule-comments@sec.gov. Please include File Number SR–NASDAQ–2016–115 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–NASDAQ–2016–115. This file number should be included on the subject line if email 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 Web site 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 such 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–NASDAQ–2016–115, and should be submitted on or before September 8, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.7
Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Relating to a Change to the Underlying Index for the PowerShares Build America Bond Portfolio

August 12, 2016.

I. Introduction

On May 3, 2016, NYSE Arca, Inc. (“Exchange”) 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: (1) Permit the continued listing and trading of Shares of the Fund following a change to the index underlying the Fund; and (2) propose changes to the index underlying the Fund and the name of the Fund.

The Exchange submitted its proposed rule change to: (1) Permit the continued listing and trading of Shares of the Fund following a change to the index underlying the Fund; and (2) propose changes to the index underlying the Fund and the name of the Fund.

The Fund seeks investment results that generally correspond to the price and yield (before fees and expenses) of The Bank of America (“BofA”) Merrill Lynch Build America Bond Index (“Build America Bond Index”). The Fund generally invests at least 80% of its total assets in taxable municipal

6 See Securities Exchange Act Release No. 78157, 81 FR 43327 (July 1, 2016). The Commission designated August 21, 2016 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.
9 The PowerShares Build America Bond Portfolio was initially listed on the Exchange on November 17, 2009 pursuant to the generic listing criteria of Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3).

securities eligible to participate in the Build America Bond program created under the American Recovery and Reinvestment Act of 2009 or other legislation providing for the issuance of taxable municipal securities on which the issuer receives federal support of the interest paid (“Build America Bonds”) and that comprise the Build America Bond Index. The Build America Bond Index is designed to track the performance of U.S. dollar-denominated investment grade taxable municipal debt publicly issued under the Build America Bond program by U.S. states and territories, and their political subdivisions, in the U.S. market.

Qualifying securities must have a minimum amount outstanding of $1 million, at least 18 months remaining term to final maturity at the time of issuance, at least one year remaining term to final maturity, a fixed coupon schedule, and an investment grade rating (based on an average of Moody’s Investors Services, Inc. (“Moody’s”), Standard & Poor’s, a division of The McGraw-Hill Company, Inc. (“S&P”) and Fitch Ratings, Inc. (“Fitch”)). The Trust has proposed to change the index underlying the Fund to the BoA Merrill Lynch U.S. Taxable Municipal Securities Plus Index (“New Index”) and to change the name of the Fund to PowerShares Taxable Municipal Bond Portfolio. The Exchange represents that the New Index does not meet the generic listing criteria of NYSE Arca Equities Rule 5.2(j)(3). The Exchange submitted this proposed rule change to permit the continued listing of the Fund. The New Index meets all of the requirements of the generic listing criteria of NYSE Arca Equities Rule 5.2(j)(3), except for that set forth in Commentary .02(a)(2). Specifically, as of February 4, 2016, approximately 60.51% of the New Index weight was composed of individual maturities of $100 million or more (determined at the time of issuance).

A. Changes to the Index Underlying the Fund

According to the Exchange, the Fund currently has a non-fundamental policy to invest at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in Build America Bonds. Moreover, as stated in the Registration Statement, the Fund complies with that non-fundamental policy because it also is required generally to invest at least 80% of the value of its total assets in the Build America Bond Index, in accordance with the terms of the relief set forth in the Trust’s Exemptive Order. However, in response to a changing market environment that includes a reduction in the number of Build America Bonds, the Adviser has proposed that the Fund’s underlying index be changed from one that is focused on Build America Bonds to one that is more broadly focused on taxable municipal debt in general, and which may include Build America Bonds. Changing the Fund’s underlying index would require changing the non-fundamental policy set forth above; accordingly, before the Fund can change its underlying index, the Registration Statement states that the Fund’s board of trustees (“Board”) must approve the underlying index change, and the Fund must provide shareholders with sixty days written notice of the change. Thus, if the proposed change is approved, the Trust represents that it intends to seek to obtain Board approval and provide the requisite shareholder notice. Subject to that Board approval and shareholder notice, the Fund intends to change its underlying index to one that is composed of taxable municipal securities, including both Build America Bonds and non-Build America Bonds. Following such change, the proposed underlying index for the Fund will be the New Index.

According to the Exchange, the change in Fund’s underlying index is designed to enable the Fund to expand its range of investments in light of a diminishing supply of Build America Bonds; otherwise, there is no other change to the Fund’s investment strategies or objective. After such change, the Fund’s investment objective will be to seek investment results that generally correspond (before fees and expenses) to the price and yield of the New Index.

In addition, the Fund will adopt a new non-fundamental investment policy to invest at least 80% of its net assets (plus borrowings for investment purposes) in taxable municipal securities. In addition, the Fund generally will invest at least 80% of its total assets in the securities that will compose the New Index, in accordance with the terms of the Trust’s Exemptive Order. However, the Fund may invest up to 20% of its total assets in securities not included in the New Index, in money market instruments, including repurchase agreements, and other funds that invest exclusively in money market instruments (subject to applicable limitations under the 1940 Act or exemptions therefrom), convertible securities and structured notes (notes on which the amount of principal repayment and interest payments is based on the movement of one or more specified factors, such as the movement of a particular security or securities index), all to the extent that the Adviser believes investment in such instruments will facilitate the Fund’s ability to achieve its new investment objective. In addition, the Fund intends to change its name to PowerShares Taxable Municipal Bond Portfolio.

B. Description of the New Index

The New Index tracks the performance of U.S. dollar-denominated taxable municipal debt publicly issued by U.S. states and territories, and their political subdivisions, in the U.S. domestic market. Qualifying securities must be subject to U.S. federal taxes and must have at least 18 months to maturity at point of issuance, at least one year remaining term to final maturity, a fixed coupon schedule, and an investment grade rating (based on an average of Moody’s, S&P and Fitch). The call date on which a pre-refunded bond will be redeemed is used for purposes of determining qualification with respect to final maturity requirements. For Build America Bonds, the minimum amount outstanding is $1 million, and only “direct pay” (i.e., a direct federal subsidy is paid to the issuer) securities qualify for inclusion. “Tax-Credit” (i.e., where the investor receives a tax credit on the interest payments) Build America Bonds are excluded. For all other securities, minimum size requirements vary based on the initial term to final maturity at the time of issuance. Securities with an initial term to final maturity greater than or equal to one year and less than five years must have a current investment grade rating (based on an average of Moody’s, S&P and Fitch). The changes described herein with respect to use of the New Index will be effective upon: (1) Approval by the Trust’s Board; (2) shareholders’ receipt of sixty days written notice of the proposed change; and (3) completing a filing with the Commission of another amendment to the Trust’s Registration Statement, or a prospectus supplement reflecting these changes. The Adviser represents that the Adviser has managed and will continue to manage the Fund in the manner described in the Registration Statement and will not implement the changes described herein until this proposed rule change is operative.

10 The changes described herein with respect to the Underlying Index and the New Index. The Index Provider is a broker-dealer and has implemented a firewall with respect to and will maintain procedures designed to prevent the use and dissemination of material non-public information regarding the New Index.

11 The description of the New Index is based on information provided by BoA Merrill Lynch. BoA Merrill Lynch is the “Index Provider” with respect to the Underlying Index and the New Index. The Index Provider is a broker-dealer and has implemented a firewall with respect to and will maintain procedures designed to prevent the use and dissemination of material non-public information regarding the New Index.
million. Securities with an initial term to final maturity greater than or equal to five years and less than ten years must have a current amount outstanding of at least $15 million. Securities with an initial term to final maturity of ten years or more must have a current amount outstanding of at least $25 million. Local bonds issued by U.S. territories within their jurisdictions that are tax exempt within the U.S. territory but not elsewhere are excluded from the New Index. All Rule 144A securities, both with and without registration rights, and securities in legal default are excluded from the New Index. New Index constituents are capitalization-weighted based on their current amount outstanding times the market price plus accrued interest. Accrued interest is calculated assuming next-day settlement. Cash flows from bond payments that are received during the month are retained in the index until the end of the month and then are removed as part of the rebalancing. Cash does not earn any reinvestment income while it is held in the New Index. The index is rebalanced on the last calendar day of the month, based on information available up to and including the third business day before the last business day of the month. No changes are made to constituent holdings other than on month end rebalancing dates.

As of February 4, 2016, approximately 84.39% of the weight of the New Index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities of the offering. In addition, as of February 4, 2016, the total dollar amount outstanding of issues in the New Index was approximately $281,589,346,769, and the average dollar amount outstanding of issues in the New Index was approximately $27,808,547. Further, the most heavily weighted component represents 6.33% of the weight of the Index and the five most heavily weighted components represent 6.33% of the weight of the New Index. Therefore, the Exchange believes that, notwithstanding that the New Index does not satisfy the criterion in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (a)(2), the New Index is sufficiently broad-based to deter potential manipulation, given that it is composed of approximately 10,126 issues and 1,811 unique issuers. In addition, the Exchange believes that the New Index securities are sufficiently liquid to deter manipulation in that a substantial portion (84.39%) of the New Index weight is composed of maturities that are part of a minimum original principal amount outstanding of $100 million for all the maturities of the offering, and in view of the substantial total dollar amount outstanding and the average dollar amount outstanding of New Index issues, as referenced above. All components of the New Index have at least an investment grade composite rating of BBB3 or higher (based on an average of S&P, Moody’s and Fitch).

The Exchange represents that: (1) With respect to the New Index, except as otherwise permitted by NYSE Arca Equities Rule 5.2(j)(3), the Shares of the New Index currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares of the Fund; and (3) the Trust is required to comply with Rule 10A–3 under the Act for the initial and continued listing of the Shares of the Fund. In addition, the Exchange represents that the Shares of the Fund will comply with all other requirements applicable to Units, including, but not limited to, requirements relating to the dissemination of key information such as the value of the New Index and the applicable Intraday Indicative Value (“IIV”), rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers and the Information Bulletin to Equity Trading Permit Holders, as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.

The current value of the New Index is widely disseminated by one or more major market data vendors at least once per day, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (b)(ii). The IIV for Shares of the Fund is disseminated by one or more major market data vendors, updated at least every 15 seconds during the Exchange’s Core Trading Session, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (c). The components and percentage weightings of the New Index are also available from major market data vendors. In addition, the portfolio of securities held by the Fund is disclosed daily on the Fund’s Web site at www.invescopowershres.com. The Exchange also represents that 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, and quotation and last-sale information will be available via the CTA high-speed line. The Web site for the Fund will include the prospectus for the Fund and additional data relating to net asset value (“NAV”) and other applicable quantitative information. In addition, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. If the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. 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. 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. If the IIV and the New Index value are not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or New Index value occurs. If the interruption to the dissemination of the IIV or New Index value persists past the trading day in which it occurred, the Exchange will halt trading. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule fixed income index: 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (order approving generic listing standards for Units and Portfolio Depositary Receipts); 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (order approving rules for listing and trading of Units).
The Commission is instituting proceedings pursuant to Section 19(b)(2) of the Act to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,” and “to protect investors and the public interest.”

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by September 8, 2016. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by September 22, 2016. The Commission asks that commenters address the sufficiency of the Exchange’s statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change.

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 email to rule-comments@sec.gov. Please include File Number SR–NYSEArca–2016–62 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–2016–62. This file number should be included on the subject line if email 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 communications relating to the proposed rule change that are filed with the Commission, and all written communications submitted by 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 Web site 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 these filings 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–2016–62 and should be submitted on or before September 8, 2016. Rebuttal comments should be submitted by September 22, 2016.

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

Robert W. Errett,
Deputy Secretary.
[FR Doc. 2016–19686 Filed 8–17–16; 8:45 am]

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19 See supra note 3.