

Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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 it 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. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

#### *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 purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that primarily holds equity securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

#### *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 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate 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 or disapprove the proposed rule change, or

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

### **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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2016-64 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-2016-64. 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 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-2016-64 and should be submitted on or before June 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-77849; File No. SR-NYSEArca-2016-62]

#### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to a Change to the Underlying Index for the PowerShares Build America Bond Portfolio**

May 17, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 3, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "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: (1) Permit the continued listing and trading of shares of the PowerShares Build America Bond Portfolio (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, as described below. The proposed rule change is available on the Exchange's Web site 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

<sup>29</sup> 17 CFR 200.30-3(a)(12).

<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.

on the proposed rule change. The text of those 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.

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

**1. Purpose**

The Exchange currently lists and trades shares ("Shares") of the Fund<sup>4</sup> under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, which governs the listing and trading of Investment Company Units ("Units") based on fixed income securities indexes.<sup>5</sup> The Fund is a series of the PowerShares Exchange-Traded Fund Trust II ("Trust").<sup>6</sup>

<sup>4</sup> On February 26, 2016, the Trust filed a post-effective amendment on Form 485 under the Securities Act of 1933 (15 U.S.C. 77a) ("1933 Act") to its registration statement on Form N-1A under the 1933 Act and the Investment Company Act of 1940 ("1940 Act") (15 U.S.C. 80a-1) (File Nos. 333-138490 and 811-21977) (the "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. 27841 (May 25, 2007) (File No. 812-13335) ("Exemptive Order").

<sup>5</sup> 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).

<sup>6</sup> The Commission previously has approved a proposed rule change relating to listing and trading on the Exchange of Units based on municipal bond indexes. See Securities Exchange Act Release Nos. 75376 (July 7, 2015), 80 FR 40113 (July 13, 2015) (SR-NYSEArca-2015-18) (order approving listing and trading of Vanguard Tax-Exempt Bond Index Fund under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 71232 (January 3, 2014), 79 FR 1662 (January 9, 2014) (SR-NYSEArca-2013-118) (order approving listing and trading of Market Vectors Short High-Yield Municipal Index ETF under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 63881 (February 9, 2011), 76 FR 9065 (February 16, 2011) (SR-NYSEArca-2010-120) (order approving listing and trading of SPDR Nuveen S&P High Yield Municipal Bond ETF Fund under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 67985 (October 4, 2012), 77 FR 61804 (October 11, 2012) (SR-NYSEArca-2012-92) (order approving proposed rule change relating to the listing and trading of iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 75468 (July 16, 2015), 80 FR 43500 (July 22, 2015) (SR-NYSEArca-2015-25) (order approving proposed rule change relating to the listing and trading of iShares iBonds Dec 2021 AMT Free Municipal Bond ETF and iShares iBonds Dec 2022 AMT-Free Municipal Bond ETF under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 72464 (June 25, 2014), 79 FR 37373 (July 1, 2014) (SR-NYSEArca-2014-45) (order approving proposed rule change governing the continued listing and trading of Shares of the PowerShares Insured California Municipal Bond

Invesco PowerShares Capital Management LLC is the investment adviser ("Adviser") for the Fund. Invesco Distributors, Inc. is the Fund's distributor ("Distributor"). The Bank of New York Mellon is the administrator, custodian and fund accounting and transfer agent for the Fund.

The Exchange is submitting this proposed rule change (1) to permit the continued listing and trading of Shares of the Fund following a change to the index underlying the Fund, and (2) to propose changes to the index underlying the Fund and the name of the Fund, as described below.

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

As described below, the Trust has proposed to change the index underlying the Fund to the BofA Merrill Lynch US Taxable Municipal Securities Plus Index (the "New Index") and to change the name of the Fund to PowerShares Taxable Municipal Bond Portfolio. The New Index does not meet the generic listing criteria of NYSE Arca Equities Rule 5.2(j)(3), as described below. The Exchange is submitting 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 those set forth in Commentary .02(a)(2).<sup>7</sup> 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).

**Changes to Index Underlying the Fund**

As stated in the Registration Statement, 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 Bonds that comprise 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 (the "Board") must approve the underlying index change, and the Fund must provide shareholders with sixty days written notice of the change.

Thus, after this proposed rule 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 Trust, the change in Fund's underlying index is designed to

<sup>7</sup> Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of \$100 million or more.

Portfolio, PowerShares Insured National Municipal Bond Portfolio and PowerShares Insured New York Municipal Bond Portfolio under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02).

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 or 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.<sup>8</sup>

#### Description of the New Index <sup>9</sup>

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 (including zero coupon bonds) 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 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 amount outstanding of at least \$10 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.<sup>10</sup> 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 2.27% of the weight of the Index and the five most heavily weighted components represent 6.33% of the weight of the New Index.<sup>11</sup> 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 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 or more 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 for Commentary .02(a)(2) to 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<sup>12</sup> under the Act for the initial and continued listing of the Shares of the Fund. In addition, the Exchange

<sup>8</sup> 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.

<sup>9</sup> The description of the New Index is based on information provided by Bank of America ("BoFA") Merrill Lynch. BoFA 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.

<sup>10</sup> Information concerning constituent bond prices, timing and conventions is provided in the BoFA Merrill Lynch Bond Index Guide, which can be accessed on Bloomberg (IND2[go], 4[go]) [sic].

<sup>11</sup> Commentary .02(a)(4) to NYSE Arca Equities Rule 5.2(j)(3) provides that no component fixed-income security (excluding Treasury Securities and GSE Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

<sup>12</sup> 17 CFR 240.10A-3.

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”),<sup>13</sup> rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers and the Information Bulletin to Equity Trading Permit Holders (“ETP 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.<sup>14</sup>

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.invescopowershares.com](http://www.invescopowershares.com).

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>15</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 in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 5.2(j)(3). The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange or the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.<sup>16</sup> 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 federal securities laws applicable to trading on the Exchange. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets that are members of the Intermarket Surveillance Group (“ISG”). In addition, the Exchange will communicate as needed regarding trading in the Shares with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Index Provider is a broker-dealer and has implemented a firewall and will maintain procedures designed to prevent the use and dissemination of material non-public information regarding the New Index.

As discussed above, the Exchange believes that the New Index is sufficiently broad-based to deter potential manipulation. 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 Index was approximately \$27,808,547. Further, the most heavily weighted component represents 2.27% of the weight of the New Index and the five most heavily weighted components represent 6.33% of the weight of the New Index.<sup>17</sup>

<sup>16</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

<sup>17</sup> Commentary .02(a)(4) to NYSE Arca Equities Rule 5.2(j)(3) provides that no component fixed-income security (excluding Treasury Securities and GSE Securities, as defined therein) shall represent

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 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 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 or more 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.

The New Index value, calculated and disseminated at least once daily, as well as the components of the Index and their percentage weightings, will be available from major market data vendors. In addition, the portfolio of securities held by the Fund will be disclosed on the Fund’s Web site. The IIV for Shares of the Fund will be disseminated by one or more major market data vendors, updated at least every 15 seconds during the Exchange’s Core Trading Session.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Fund’s portfolio holdings will be disclosed on the Fund’s Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the IIV for Shares of the Fund will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange’s Core Trading Session. The current value of the New Index will be disseminated by one or more major market data vendors at least once per day. 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

more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

<sup>13</sup> The IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange’s Core Trading Session of 9:30 a.m. to 4:00 p.m., Eastern time. Currently, it is the Exchange’s understanding that several major market data vendors display and/or make widely available IIVs taken from the Consolidated Tape Association (“CTA”) or other data feeds.

<sup>14</sup> See, e.g., Securities Exchange Act Release Nos. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR-NYSEArca-2007-36) (order approving NYSE Arca generic listing standards for Units based on a 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).

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

net asset value ("NAV") and other applicable quantitative information. Moreover, 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 applicable IIV, and the New Index value are not being disseminated as required, the Corporation 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 Corporation will halt trading. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 7.34, which sets forth circumstances under which Shares of the Fund may be halted. In addition, investors will have ready access to information regarding the applicable IIV, and quotation and last sale information for the Shares. Trade price and other information relating to municipal bonds is available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") system.

All statements and representations made in this filing regarding (a) the description of the Fund's portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. The Adviser has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the

applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5(m).

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 it will facilitate the continued listing and trading of exchange-traded products that principally hold municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, investors will have ready access to information regarding the IIV and quotation and last sale information for the Shares.

#### *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 purpose of the Act. The Exchange notes that the proposed rule change will facilitate the continued listing and trading of an exchange-traded product that holds municipal securities and will enhance competition among market participants, to the benefit of investors and the marketplace.

#### *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 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate 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 or disapprove such proposed rule change; or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

### **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](mailto: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 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 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-2016-62 and should be submitted on or before June 13, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2016-12016 Filed 5-20-16; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77845; File No. SR-NYSEArca-2016-08]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Adopt NYSE Arca Equities Rule 8.900 To Permit Listing and Trading of Managed Portfolio Shares and To Permit Listing and Trading of Shares of Fifteen Issues of the Precidian ETFs Trust

May 17, 2016.

On January 27, 2016, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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: (1) Adopt NYSE Arca Equities Rule 8.900; and (2) approve the listing and trading of shares ("Shares") of fifteen issues of the Precidian ETFs Trust ("Trust"). The proposed rule change was published for comment in the **Federal Register** on February 18, 2016.<sup>3</sup> On March 9, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission has received four comments on the proposed rule change.<sup>5</sup> This order

institutes proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1 thereto.

### I. Summary of the Exchange's Description of the Proposed Rule Change

The Exchange proposes to adopt new NYSE Arca Equities Rule 8.900, which would govern the listing and trading of "Managed Portfolio Shares."<sup>7</sup> The Exchange also proposes to list and trade the Shares of the following funds under proposed NYSE Arca Equities Rule 8.900: (1) Precidian U.S. Managed Volatility Fund; (2) Precidian Strategic Value; (3) Precidian Large Cap Value; (4) Precidian Focused Dividend Strategy; (5) Precidian U.S. Large Cap Growth; (6) Precidian U.S. Core Equity; (7) Precidian U.S. Mid Cap Growth; (8) Precidian Total Return; (9) Precidian High Dividend Yield; (10) Precidian Small Cap Dividend Value; (11) Precidian Multi-factor Small Cap Core; (12) Precidian Multi-factor Small Cap Growth; (13) Precidian Large Cap Core Plus 130/30; (14) Precidian Mid Cap Core Plus 130/30; and (15) Precidian Small Cap Core Plus 130/30 (each a "Fund," and collectively the "Funds"). In addition, the Exchange proposes to amend NYSE Arca Equities Rule 7.34 (Trading Sessions), which relates to securities traded on the Exchange during the Core Trading Session, to add a reference to proposed NYSE Arca Equities Rule 8.900.

### A. Key Features of Managed Portfolio Shares

While Investment Companies issuing Managed Portfolio Shares would be actively-managed, and in that respect would be similar to those issuing

Managed Fund Shares,<sup>8</sup> Managed Portfolio Shares would differ from Managed Fund Shares in the following respects.

- First, issues of Managed Fund Shares are required to disseminate their "Disclosed Portfolio" at least once daily.<sup>9</sup> By contrast, the portfolio for an issue of Managed Portfolio Shares would be disclosed only quarterly.
- Second, in connection with the redemption of shares in "Redemption Unit" size (as described below), the delivery of any portfolio securities in kind would only be effected through a "Confidential Account" (as described below) for the benefit of the redeeming authorized participant without disclosing the identity of the securities to the authorized participant.
- Third, for each series of Managed Portfolio Shares, a Verified Intraday Indicative Value ("VIIV") would be disseminated by one or more major market-data vendors every second during the Exchange's Core Trading Session (normally, 9:30 a.m. to 4:00 p.m., Eastern Time ("E.T.")).<sup>10</sup> The Exchange states that dissemination of the VIIV will allow investors to determine the estimated intra-day value of the underlying portfolio of a series of Managed Portfolio Shares and will provide a close estimate of that value throughout the trading day.<sup>11</sup>

### B. Arbitrage of Managed Portfolio Shares

The Exchange asserts that market makers will be able to make efficient and liquid markets priced near the VIIV even without daily disclosure of a

<sup>8</sup> Managed Fund Shares are shares of actively-managed Investment Companies listed and traded under NYSE Arca Equities Rule 8.600.

<sup>9</sup> NYSE Arca Equities Rule 8.600(c)(2) defines the term "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 net asset value at the end of the business day. NYSE Arca Equities Rule 8.600(d)(2)(B)(i) requires that, for Managed Fund Shares, the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

<sup>10</sup> Proposed NYSE Arca Equities Rule 8.900(c)(2) defines the VIIV as the estimated indicative value of a Managed Portfolio Share based on all of the issuer's holdings as of the close of business on the prior business day, priced and disseminated in one second intervals, and subject to validation by a pricing verification agent of the Investment Company that is responsible for comparing multiple independent pricing sources to establish the accuracy of the VIIV. The specific methodology for calculating the VIIV will be disclosed on each Fund's Web site.

<sup>11</sup> According to the Exchange, the VIIV should not be viewed as a "real-time" update of the NAV per Share of each Fund, because the VIIV may not be calculated in the same manner as the NAV, which will be computed once a day, generally at the end of the business day.

<sup>18</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> See Securities Exchange Act Release No. 76944 (Feb. 11, 2016), 81 FR 8269 ("Notice").

<sup>4</sup> In Amendment No. 1 to the proposed rule change, the Exchange corrected the citations to the Trust's Form N-1A and Exemptive Application, which were misstated in the proposal. Because Amendment No. 1 is technical in nature and does not materially alter the substance of the proposed rule change or raise any novel regulatory issues, it is not subject to notice and comment. Amendment No. 1 to the proposed rule change is available on the Commission's Web site at: <http://www.sec.gov/comments/sr-nysearca-2016-08/nysearca201608-1.pdf>.

<sup>5</sup> See Letter from Gary L. Gastineau, President, ETF Consultants.com, Inc., to Brent J. Fields, Secretary, Commission, dated Mar. 10, 2016 ("Gastineau Letter"); Letter from David Nadig (Mar. 31, 2016) ("Nadig Letter"); Letter from Andrew M. Gross, Jr. (Apr. 5, 2016) ("Gross Letter"); Letter from Andrew M. Gross, Jr. (Apr. 5, 2016) ("Gross Letter"); Letter from Joseph A. Sullivan, Chairman and Chief Executive Officer, Legg Mason Global

Asset Management, to Mary Jo White, Chair, Commission (Apr. 15, 2016) ("Sullivan Letter"). The comment letters are available on the Commission's Web site at: <https://www.sec.gov/comments/sr-nysearca-2016-08/nysearca201608.shtml>.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> Proposed NYSE Arca Equities Rule 8.900(c)(1) defines the term "Managed Portfolio Share" as a security that (a) is issued by a registered investment company organized as an open-end management investment company ("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; and (b) when aggregated in a number of shares equal to a Redemption Unit (as defined herein) or multiples thereof, may be redeemed at the request of an authorized participant (as defined in the Investment Company's Form N-1A filed with the Commission), which authorized participant will be paid through a confidential account established for its benefit a portfolio of securities and/or cash with a value equal to the next determined net asset value ("NAV").