

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82587; File No. SR–NYSEArca–2018–05]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Guggenheim Ultra Short Duration ETF and the Guggenheim Total Return Bond ETF

January 25, 2018.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (“Act”) <sup>2</sup> and Rule 19b–4 thereunder, <sup>3</sup> notice is hereby given that on January 16, 2018, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“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 reflect changes to certain representations made in the respective proposed rule changes previously filed with the Commission pursuant to Rule 19b–4 relating to the Guggenheim Ultra Short Duration ETF and the Guggenheim Total Return Bond ETF (each a “Fund” and, collectively, the “Funds”). Shares of the Funds are currently listed and traded on the Exchange under NYSE Arca Rule 8.600–E. The proposed rule change is available on the Exchange’s website 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 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 Commission has approved the listing and trading on the Exchange of shares (“Shares”) of the Funds, under NYSE Arca Rule 8.600–E (formerly NYSE Arca Equities Rule 8.600), which governs the listing and trading of Managed Fund Shares.<sup>4</sup> The Funds’ Shares are currently listed and traded on the Exchange under NYSE Arca Rule 8.600–E.<sup>5</sup>

<sup>4</sup> 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–1) (“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 Rule 5.2–E(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.

<sup>5</sup> The Commission previously approved the listing and trading of the Shares of the Guggenheim Ultra Short Duration ETF (formerly, Guggenheim Enhanced Short Duration ETF and, prior to that, Guggenheim Enhanced Ultra-Short Bond ETF). See Securities Exchange Act Release Nos. 64550 (May 26, 2011), 76 FR 32005 (June 2, 2011) (SR–NYSEArca–2011–11) (Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of the Guggenheim Enhanced Core Bond ETF and Guggenheim Enhanced Ultra-Short Bond ETF) (“First Short Duration Order”); 64224 (April 7, 2011), 76 FR 20401 (April 12, 2011) (SR–NYSEArca–2011–11) (Notice of Proposed Rule Change Relating to the Listing and Trading of the Guggenheim Enhanced Core Bond ETF and Guggenheim Enhanced Ultra-Short Bond ETF) (“First Short Duration Notice,” and, together with the First Short Duration Order, “First Short Duration Releases”); 74814 (April 27, 2015), 80 FR 24986 (May 1, 2015) (SR–NYSEArca–2014–107) (Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change to Reflect Changes to the Means of Achieving the Investment Objective Applicable to the Guggenheim Enhanced Short Duration ETF) (“Second Short Duration Order”); 73512 (November 3, 2014), 79 FR 66442 (November 7, 2014) (SR–NYSEArca–2014–107) (Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Reflect Changes to the Means of Achieving the Investment Objective Applicable to the Guggenheim Enhanced Short Duration ETF) (“Second Short Duration Notice” and, together with the Second Short Duration Order and the First Short Duration Releases, the “Short Duration Releases”). The Commission previously approved the listing and trading of the Shares of the Guggenheim Total Return Bond ETF in Securities Exchange Act Release No. 76719 (December 21, 2015), 80 FR 80859 (December 28, 2015) (SR–NYSEArca–2015–73) (Notice of Filing of Amendment Nos. 3, 4, 5, and 6 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 3, 4, 5 and 6, to List and Trade of Shares of the Guggenheim Total Return Bond ETF under NYSE Arca Equities Rule 8.600) (“Total Return Order”). See also Securities Exchange Act Release No. 75930 (September 16,

The Shares of the Guggenheim Ultra Short Duration ETF are offered by Claymore Exchange-Traded Fund Trust and Shares of the Guggenheim Total Return Bond ETF are offered by Claymore Exchange-Traded Fund Trust 2 (together with the Claymore Exchange-Traded Fund Trust, the “Claymore Trusts”). PowerShares Actively Managed Exchange-Traded Fund Trust has filed a combined prospectus and proxy statement (the “Proxy Statement”) with the Commission on Form N–14 describing a “Plan of Reorganization” pursuant to which, following approval of the Funds’ shareholders, all or substantially all of the assets and substantially all of the liabilities of each Fund would be transferred to a corresponding, newly-formed fund of the PowerShares Actively Managed Exchange-Traded Fund Trust, described below. According to the Proxy Statement, the investment objective of each Fund will be the same following implementation of the Plan of Reorganization (“Reorganization”).<sup>6</sup> Following shareholder approval and closing of the Reorganization, investors will receive an identical number of shares of beneficial interest of the corresponding PowerShares fund in an amount equal in value to the net asset value of the Shares of the Funds of the Claymore Trusts immediately prior to the Reorganization (and cash with respect to any fractional shares held, if any).

In this proposed rule change, the Exchange proposes to reflect changes to certain representations made in the respective proposed rule changes previously filed with the Commission pursuant to Rule 19b–4 relating to the Funds, as described above,<sup>7</sup> which changes would be implemented as a result of the Plan of Reorganization.<sup>8</sup>

2015), 80 FR 57251 (September 22, 2015) (Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Listing and Trading Shares of the Guggenheim Total Return Bond ETF under NYSE Arca Equities Rule 8.600) (“Total Return Notice” and, together with the Total Return Order and Amendment Nos. 1, 3, 4, 5 and 6 to the Total Return Notice, the “Total Return Releases”).

<sup>6</sup> See registration statement on Form N–14 under the Securities Act of 1933 (15 U.S.C. 77a) (“1933 Act”), dated November 21, 2017 (File No. 333–221699).

<sup>7</sup> See note 5, *supra*.

<sup>8</sup> The Guggenheim Ultra Short Duration ETF’s investment adviser, Guggenheim Funds Investment Advisors, LLC, and the Guggenheim Total Return Bond ETF’s investment adviser, Guggenheim Partners Investment Management, LLC, represent that each will manage each respective Fund in the manner described in the applicable proposed rule change(s) for such Fund as referenced in note 5, *supra*, and the changes described herein will not be implemented until this proposed rule change is operative.

<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.

Guggenheim Ultra Short Duration ETF<sup>9</sup>

The First Short Duration Notice stated the name of the Fund as Guggenheim Enhanced Ultra-Short Bond ETF, which name was later changed to Guggenheim Enhanced Short Duration ETF and then to Guggenheim Ultra Short Duration ETF. Following the Reorganization, the name of the Fund will be PowerShares Ultra Short Duration Portfolio.

The Second Short Duration Notice stated that the Fund's trust is Claymore Exchange-Traded Fund Trust and the Fund's investment adviser is Guggenheim Funds Investment Advisors, LLC. Following the Reorganization, the Fund's trust will be PowerShares Actively Managed Exchange-Traded Fund Trust, and the Fund's investment adviser and sub-adviser will be Invesco PowerShares Capital Management LLC and Invesco Advisers, Inc., respectively.<sup>10</sup>

<sup>9</sup> On October 20, 2017 the PowerShares Actively Managed Exchange-Traded Fund Trust filed with the Commission a pre-effective amendment to its registration statement on Form N-1A under the 1933 Act and under the 1940 Act relating to the Funds [sic] (File Nos. 333-147622 and 811-22148) relating to the PowerShares Ultra Short Duration Portfolio and the PowerShares Total Return Bond Portfolio. The October 20, 2017 filing is intended to create a new entity to serve as the vehicle into which the Funds will be reorganized through the Plan of Reorganization contained in the Proxy Statement. In addition, the Commission has issued an order granting certain exemptive relief to the PowerShares Actively Managed Exchange-Traded Fund Trust under the 1940 Act. See Investment Company Act Release No. 28171 (February 27, 2008) (File No. 812-13386), as amended by Investment Company Release No. 28467 (October 27, 2008) (File No. 812-13491).

<sup>10</sup> Invesco PowerShares Capital Management LLC and Invesco Advisers, Inc. each is not registered as a broker-dealer but is affiliated with a broker-dealer. Each such entity has implemented and will maintain a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition and/or changes to a Fund's portfolio. In the event (a) Invesco PowerShares Capital Management LLC or Invesco Advisers, Inc. becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate regarding access to information concerning the composition and/or changes to a Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. In addition, personnel who make decisions on a Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding a Fund's portfolio.

An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, with respect to PowerShares Ultra Short Duration Portfolio and PowerShares Total Return Bond Portfolio, Invesco PowerShares Capital Management LLC and Invesco Advisers, Inc., as adviser and sub-adviser, respectively, and their related personnel, are subject to the provisions of

The First Short Duration Notice stated that the Fund's distributor is Claymore Securities, Inc. Following the Reorganization, the Fund's distributor will be Invesco Distributors, Inc.

The First Short Duration Notice stated the Fund is considered non-diversified under the 1940 Act;<sup>11</sup> the Trust changed this representation in an amendment to the Trust's registration statement to state that the Fund is considered a diversified fund.<sup>12</sup> Following the Reorganization, the Fund's registration statement will state that the Fund will be considered non-diversified under the 1940 Act.

## Guggenheim Total Return Bond ETF

The Total Return Releases stated the name of the Fund as Guggenheim Total Return Bond ETF. Following the Reorganization, the Fund's name will be PowerShares Total Return Bond Portfolio.

The Total Return Releases stated that the Fund's trust is Claymore Exchange-Traded Fund Trust 2, and the Fund's investment adviser is Guggenheim Partners Investment Management, LLC. Following the Reorganization, the Fund's trust will be PowerShares Actively Managed Exchange-Traded Fund Trust, and the Fund's investment adviser will be Invesco PowerShares Capital Management LLC. The Total Return Releases did not specify that the Fund will have a sub-adviser. Following

Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. 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.

<sup>11</sup> The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80e). The Commission has previously approved listing and trading of issues of Managed Fund Shares that are classified as non-diversified investment companies under the 1940 Act. See, e.g., Securities Exchange Act Release No. 74338 (February 20, 2015), 80 FR 10556 (February 26, 2015) (SR-NYSEArca-2014-143) (order approving proposed rule change relating to the listing and trading of shares of the SPDR DoubleLine Total Return Tactical ETF under NYSE Arca Equities Rule 8.600).

<sup>12</sup> See footnote 15 to the Second Short Duration Order.

the Reorganization, the Fund will have a sub-adviser, namely, Invesco Advisers, Inc.<sup>13</sup> The First [sic] Total Return Notice stated that the Fund's distributor is Guggenheim Funds Distributors, LLC. Following the Reorganization, the Fund's distributor will be Invesco Distributors, Inc.

The investment objective of each Fund will remain unchanged. Except for the changes noted above, all other representations made in the Short Duration Releases and the Total Return Releases, respectively, remain unchanged.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>14</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, and is designed to promote just and equitable principles of trade and to protect investors and the public interest.

PowerShares Actively Managed Exchange-Traded Fund Trust has filed the Proxy Statement describing the Reorganization pursuant to which, following approval of the Funds' shareholders, all assets of each Fund would be transferred to a corresponding fund of the PowerShares Actively Managed Exchange-Traded Fund Trust. This filing proposes to reflect organizational and administrative changes that would be implemented as a result of the Reorganization, including changes to the Funds' names, the trust entity issuing shares of the Funds, the adviser and sub-adviser to the Funds and the distributor for the Funds. In addition, following the Reorganization, the PowerShares Ultra Short Duration Portfolio's registration statement will state that it will be considered non-diversified under the 1940 Act. As noted above, Invesco PowerShares Capital Management LLC and Invesco Advisers, Inc. each is not registered as a broker-dealer but is affiliated with a broker-dealer. Each such entity has implemented and will maintain a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition and/or

<sup>13</sup> See note 10, *supra*.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

changes to a Fund's portfolio. In the event (a) Invesco PowerShares Capital Management LLC or Invesco Advisers, Inc. becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. According to the Proxy Statement, the investment objective of each Fund will be the same following implementation of the Reorganization. Except for the changes noted in this proposed rule change, all other representations made in the Short Duration Releases and the Total Return Releases, respectively, remain unchanged. The Exchange believes these changes will not adversely impact investors or Exchange trading.

#### *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 Act. The Exchange believes the proposed rule change will enhance competition and benefit of [sic] investors and the marketplace by permitting continued listing and trading of Shares of the Funds following implementation of the changes described above that would follow the Reorganization, which changes are non-substantive and would not impact the respective investment objective of each Fund.

#### *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**

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to

Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that the proposal would allow the Exchange to reflect organizational and administrative changes to the Funds that would be implemented as a result of the Reorganization, including changes to the Funds' names, the trust entity issuing shares of the Funds, the adviser and sub-adviser to the Funds, and the distributor for the Funds. In addition, following the Reorganization, the PowerShares Ultra Short Duration Portfolio's registration statement will state that it will be considered non-diversified under the 1940 Act. The Commission further notes that the Exchange represents that the investment objective of each Fund will remain the same, and, except for the changes noted in this proposed rule change, all other representations made in the Short Duration Releases and the Total Return Releases remain unchanged. The Commission believes that the proposal raises no new or novel regulatory issues and waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.<sup>17</sup>

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:

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### *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-2018-05 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-2018-05. 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 website (<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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2018-05 and should be submitted on or before February 21, 2018.

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

**Eduardo A. Aleman,**  
Assistant Secretary.

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<sup>18</sup> 17 CFR 200.30-3(a)(12).