

proposal may become operative, and the suspended rule may be reinstated, immediately upon filing. The Exchange believes that, while a suspension of Rule 123D(3) for Fannie Mae and Freddie Mac securities was warranted by the Treasury Department's actions, the immediate benefits of suspending that rule have diminished, and that therefore it is consistent with the Exchange Act that the rule be reinstated as expeditiously as possible, since the reinstated rule would prevent the Exchange from executing transactions in Fannie Mae and Freddie Mac securities at prices below \$1.00 that may violate Regulation NMS.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore grants the Exchange's request and designates the proposal to be operative upon filing.¹⁸

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 e-mail to rule-comments@sec.gov. Please include File No. SR-NYSE-2008-83 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSE-2008-83. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. 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-NYSE-2008-83 and should be submitted on or before October 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58517; File No. SR-NYSE-2008-61]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending NYSE Rule 104(e) (Dealings by Specialists) To Modify the Conditions Governing the Specialists' Use of the Price Improvement Trading Message Pursuant to NYSE Rule 104(b)(i)(H)

September 11, 2008.

On July 25, 2008, the New York Stock Exchange LLC ("NYSE" or "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 modify the rule governing the specialists' use of the price improvement trading message. The

proposed rule change was published for comment in the **Federal Register** on August 7, 2008.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

Pursuant to NYSE Rule 104(b), specialists may use algorithms to generate quoting and trading messages. Such trading messages may provide price improvement to an order, subject to the conditions set forth in Rule 104(e). In order to provide price improvement to a marketable incoming order, Rule 104(e)(i) requires that the specialist must be represented in the bid or offer in a "meaningful amount." Rule 104(e)(ii) defines "meaningful amount" as at least ten round-lots for the 100 most active securities on the Exchange, based on average daily volume, and at least five round-lots for all other securities on the Exchange. NYSE proposes to delete the requirement in Rule 104(e)(i) that specialists must be represented in a bid or offer in a meaningful amount to provide price improvement to the incoming order.⁴

The Commission has carefully reviewed the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,⁵ and, in particular, Section 6(b)(5) of the Act,⁶ which requires, among other things, that NYSE rules be designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

As NYSE stated in its proposal, average quote sizes on the Exchange have decreased in recent years.⁷ Because of this, the Exchange believes the meaningful amount requirement for price improvement is a deterrent to specialists' participation in price improvement. The Commission believes that deletion of the meaningful amount requirement should encourage greater participation by specialists in the Exchange's price improvement mechanism. At the same time, the Commission must carefully review

³ See Securities Exchange Act Release No. 58278 (July 31, 2008), 73 FR 46124 ("Notice").

⁴ As part of this rule change, NYSE also proposes deleting the definition of "meaningful amount" in Rule 104(e)(ii).

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ See Notice *supra* note 3, at 46125.

¹⁸ For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

trading rule proposals that seek to offer special advantages to market participants. Although an exchange may reward its participants for the benefits they provide to the exchange's market, such rewards must not be disproportionate to the services provided.⁸ In considering the totality of the benefits accorded to and obligations imposed upon specialists on the Exchange, the Commission believes that it is reasonable for NYSE to delete the "meaningful amount" requirement of Rule 104(e).⁹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-2008-61) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58512; File No. SR-NYSEArca-2008-85]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing and Trading of Shares of the PowerShares Active U.S. Real Estate Fund

September 11, 2008.

On August 11, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") 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 list and trade shares ("Shares") of the PowerShares Active U.S. Real Estate Fund ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published in the **Federal Register** on August 26, 2008 for a 15-day comment

period.³ The Commission received no comments on the proposal. This order grants approval to the proposed rule change on an accelerated basis.

I. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.600, which governs the listing of Managed Fund Shares.⁴ The Exchange states that the Shares will conform to the initial and continued listing criteria under that rule.

The Shares will be offered by PowerShares Actively Managed Exchange-Traded Fund Trust ("Trust"),⁵ a business trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company. The Exchange states that the Fund will not purchase or sell securities in markets outside the United States. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Act,⁶ as provided by NYSE Arca Equities Rule 5.3.

A. Description of the Fund

Invesco PowerShares Capital Management LLC ("Adviser") is the investment adviser for the Fund and is registered as an "investment adviser" under the Investment Advisers Act of 1940 ("Advisers Act").⁷ Invesco

Institutional (N.A.), Inc. is the Fund's primary investment sub-adviser and is also registered as an "investment adviser" under the Advisers Act. Invesco Aim Distributors, Inc. (the "Distributor") serves as the principal underwriter and distributor for the Fund.⁸

The Exchange states that, according to the Registration Statement, the Fund has an investment objective of high total return through growth of capital and current income. It seeks to achieve its investment objective by investing, under normal market conditions, at least 80% of its assets in securities of companies that are principally engaged in the U.S. real estate industry.⁹ Specifically, the Fund plans to invest principally in equity real estate investment trusts ("REITs"). Equity REITs pool investors' funds for investments primarily in real estate properties or real estate-related loans (e.g., mortgages). The Fund may also invest in real estate operating companies ("REOCs"), as well as securities of other companies

all access persons to report, and such investment adviser to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A-1; (4) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer ("CCO") or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (5) provisions requiring the investment adviser to provide each of its supervised persons with a copy of the code of ethics and any amendments, and requiring its supervised persons to provide to such investment adviser written acknowledgment of their receipt of the code and any amendments. 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 rules adopted thereunder, (ii) reviewed no less frequently than annually the adequacy of the policies and procedures established pursuant to (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 (i) above. See 17 CFR 275.206(4)-7.

⁸ The Exchange states that the Adviser is affiliated with the Distributor, a broker-dealer. As required by Commentary .07 to NYSE Arca Equities Rule 8.600, the Exchange represents that the Adviser has implemented a "fire wall" with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. Commentary .07 to NYSE Arca Equities Rule 8.600 also requires personnel, who make decisions on the portfolio composition of the Fund, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund's portfolio.

⁹ A company is considered to be principally engaged in the U.S. real estate industry if: (i) It derives 50% of its revenues or profits from the ownership, leasing, construction, financing, or sale of U.S. real estate; or (ii) it has at least 50% of the value of its assets invested in U.S. real estate.

⁸ See Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008) at 40148.

⁹ The Commission notes that, through a separate proposed rule change, the Exchange has proposed to eliminate all of the provisions relating to the specialists' price improvement mechanism under NYSE Rule 104(e) by October 15, 2008. See Securities Exchange Act Release No. 58184 (July 17, 2008), 73 FR 42853 (July 23, 2008) (SR-NYSE-2008-46).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58395 (August 20, 2008), 73 FR 50382.

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

⁵ The Trust is registered under the 1940 Act. On June 26, 2008, the Trust filed with the Commission a Registration Statement for the Fund on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the Fund (File Nos. 333-147622 and 811-22148) ("Registration Statement"). The Exchange states that the description of the operation of the Trust herein is based on the Registration Statement.

⁶ 17 CFR 240.10A-3.

⁷ 15 U.S.C. 80b-1. The Exchange represents that the Adviser and its related personnel are subject to Rule 204A-1 under the Advisers Act (17 CFR 275.204A-1). This rule specifically requires the adoption of a code of ethics by an investment adviser to include, at a minimum: (1) A standard or standards of business conduct that reflect the fiduciary obligations of such investment adviser and its supervised persons; (2) provisions requiring its supervised persons to comply with applicable federal securities laws; (3) provisions that require