

concurrently with the confirmation of a transaction; and (g) trading information. The Information Bulletin will also advise ETP Holders of their suitability obligations with respect to recommended transactions to customers in the Shares, and will state that ETP Holders that carry customer accounts should follow the FINRA Regulatory Notice with respect to suitability.

(5) With respect to application of Rule 10A-3 under the Act,<sup>33</sup> the Trust relies on the exception contained in Rule 10A-3(c)(7).<sup>34</sup>

(6) The Sponsor represents that the Trust will invest in Index Futures and Collateral Assets in a manner consistent with the Trust's investment objective and not to achieve additional leverage.

(7) With respect to Index Futures traded on exchanges, not more than 10% of the weight of such Index Futures in the aggregate shall consist of futures contracts whose principal trading market (a) is not a member of ISG or (b) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement, provided that, so long as the Exchange may obtain market surveillance information with respect to transactions occurring on the COMEX pursuant to the ISG memberships of CME and NYMEX, futures contracts whose principal trading market is COMEX shall not be subject to the prohibition in (a) above.

(8) A minimum of 100,000 Shares of the Trust will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations and description of the Trust, including those set forth above and in the Notice.<sup>35</sup>

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act<sup>36</sup> and the rules and regulations thereunder applicable to a national securities exchange.

<sup>33</sup> 17 CFR 240.10A-3.

<sup>34</sup> 17 CFR 240.10A-3(c)(7).

<sup>35</sup> The Commission notes that it does not regulate the market for futures in which the Trust plans to take positions, which is the responsibility of the CFTC. The CFTC has the authority to set limits on the positions that any person may take in futures. These limits may be directly set by the CFTC or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

<sup>36</sup> 15 U.S.C. 78f(b)(5).

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>37</sup> that the proposed rule change (SR-NYSEArca-2013-48), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2013-16377 Filed 7-8-13; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69915; File No. SR-NYSEArca-2013-56]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading of Shares of the PowerShares China A-Share Portfolio Under NYSE Arca Equities Rule 8.600

July 2, 2013.

##### I. Introduction

On May 21, 2013, 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" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the PowerShares China A-Share Portfolio ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on May 30, 2013.<sup>3</sup> The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

##### II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by PowerShares Actively Managed Exchange-Traded Fund Trust ("Trust"), a statutory trust organized under the laws of the State of Delaware and

<sup>37</sup> 15 U.S.C. 78s(b)(2).

<sup>38</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. 69634 (May 23, 2013), 78 FR 32487 ("Notice").

registered with the Commission as an open-end management investment company.<sup>4</sup> The investment adviser to the Fund will be Invesco PowerShares Capital Management LLC ("Adviser"). Invesco Distributors, Inc. ("Distributor") will serve as the distributor of the Fund Shares. The Bank of New York Mellon Corporation ("Administrator," "Transfer Agent," or "Custodian") will serve as administrator, custodian, and transfer agent for the Fund. The Exchange states that the Adviser is not a broker-dealer but is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio.<sup>5</sup>

The Fund's investment objective will be to seek to provide long term capital appreciation. The Fund will seek to achieve its investment objective by using a quantitative, rules-based strategy designed to provide returns that correspond to the performance of the FTSE China A50 Index ("Benchmark"). The Benchmark is designed for investors who seek exposure to China's domestic market through "A-Shares," which are securities of companies that are incorporated in mainland China and that trade on the Shanghai Stock Exchange or the Shenzhen Stock Exchange. The Benchmark is comprised of the securities of the largest 50 A-Share companies, as determined by full market capitalization, listed on the Shanghai and Shenzhen Stock Exchanges.

Under normal circumstances,<sup>6</sup> the Fund generally will invest at least 80%

<sup>4</sup> The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). On April 20, 2012, the Trust filed with the Commission a post-effective amendment to Form N-1A under the Securities Act of 1933 and under the 1940 Act relating to the Fund (File Nos. 333-147622 and 811-22148) ("Registration Statement"). The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 28171 (February 27, 2008) (File No. 812-13386) ("Exemptive Order").

<sup>5</sup> See NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its 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.

<sup>6</sup> The term "under normal circumstances" includes, but is not limited to, the absence of: extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-

of its net assets in a combination of investments whose collective performance is designed to correspond to the performance of the Benchmark. These investments will be: (i) Futures contracts on the Benchmark; (ii) exchange-traded funds (“ETFs”) that provide exposure to the China A-Shares market (“Underlying ETFs”);<sup>7</sup> and (iii) A-Shares included in the Benchmark, to the extent permissible under Chinese law. As described below, the Fund expects to invest its remaining assets in U.S. government securities, money market instruments (including repurchase agreements), cash, and cash equivalent securities (*i.e.*, corporate commercial paper) to collateralize investments in futures contracts or for other purposes. Although the Fund will seek to provide returns that generally correspond to the performance of the Benchmark, the Fund will be actively managed by the Adviser and will not be designed to track the performance of any index.

“A-Shares” are shares of stock that are issued by companies incorporated in mainland China and that are traded in Renminbi on the Shanghai Stock Exchange or the Shenzhen Stock Exchange. Due to strict controls imposed by the Chinese government, the Fund currently cannot invest directly in A-Shares, which are available only to domestic Chinese investors and a limited pool of foreign investors, including foreign investors who have been approved as a Qualified Foreign Institutional Investor (“QFII”) by the China Securities Regulatory Commission and have obtained a QFII license. After obtaining a QFII license, a QFII applies to China’s State Administration of Foreign Exchange for a specific aggregate dollar amount investment quota of A-Shares (“A-Share Quota”) in which the QFII can invest. In order for the Fund to invest directly in A-Shares, the Adviser would need to apply for a QFII license and obtain an A-Share Quota.

If the Adviser obtains a QFII license, the Fund may invest directly in A-Shares through the QFII license. There

made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

<sup>7</sup> For purposes of this proposed rule change, Underlying ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)) and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The Underlying ETFs all will be listed and traded in the U.S. on registered exchanges or the Stock Exchange of Hong Kong Limited (“HKSE”), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited, Hong Kong Exchanges and Clearing Limited is a member of the Intermarket Surveillance Group (“ISG”).

are no assurances that such a QFII license would be granted, or that such a license, if granted, would permit the Fund to purchase A-Shares in an amount necessary to provide the Fund with sufficient A-Shares exposure.

Because it currently cannot invest in A-Shares directly, the Fund will invest primarily in futures contracts on the Benchmark that provide exposure to the China A-Shares market. These futures contracts are listed on the Singapore Exchange (“SGX”).<sup>8</sup> By investing in futures contracts on the Benchmark, the Fund will have no direct ownership of the A-Shares of the companies included in the Benchmark, but the Fund will gain exposure to the performance of those companies.<sup>9</sup>

The Fund also may invest in Underlying ETFs listed on U.S. securities exchanges or on the HKSE that provide exposure to China A-Shares.

The Fund will invest in futures contracts on the Benchmark—specifically, in SGX-listed futures contracts—as a significant part of its investment strategy. Generally, futures contracts are a type of derivative whose value depends upon, or is derived from, the value of an underlying asset, reference rate, or index. The Fund’s use of futures contracts will be underpinned by investments in short-term, high quality U.S. Treasury Securities, money market instruments, cash, and cash equivalent securities, as described below.<sup>10</sup> The Trust’s Exemptive Order

<sup>8</sup> SGX is a member of the ISG.

<sup>9</sup> Futures contracts on the Benchmark were first approved for investment by U.S. investors by the Commodity Futures Trading Commission (“CFTC”) in January 2012. Futures contracts on the Benchmark have expirations ranging from the two nearest consecutive months, and March, June, September, and December on a 1-year cycle, and provide investors the ability to invest based on their view of the future direction or movement of the Benchmark. FTSE International Limited (“FTSE”) reviews constituents in the Benchmark quarterly using data from the close of business on the Monday following the third Friday in February, May, August, and November. FTSE will implement any constituent changes on the next trading day following the third Friday in March, June, September, and December.

<sup>10</sup> With respect to certain kinds of futures entered into by the Fund that involve obligations to make future payments to third parties, under applicable federal securities laws, rules, and interpretations thereof, the Fund must “set aside” (referred to sometimes as “asset segregation”) liquid assets, or engage in other measures to “cover” open positions with respect to such transactions. With respect to futures contracts that are not contractually required to “cash-settle,” the Fund must cover its open positions by setting aside liquid assets equal to the contracts’ full, notional value. With respect to futures contracts that are contractually required to “cash-settle,” the Fund may set aside liquid assets in an amount equal to the Fund’s daily marked-to-market (net) obligation rather than the notional value of the futures contract.

places no limit on the amount of derivatives in which the Fund can invest. The futures contracts will be used to simulate full investment in China A-Share securities. To the extent the Fund uses futures, it will do so only in accordance with Rule 4.5 of the Commodity Exchange Act (“CEA”).<sup>11</sup>

### The Subsidiary

The Fund may seek to gain exposure to the A-Shares market through investments in a subsidiary organized in the Cayman Islands (“Subsidiary”) that in turn would make investments in futures contracts that provide exposure to China A-Shares. If utilized, the Subsidiary would be wholly-owned and controlled by the Fund, and its investments would be consolidated into the Fund’s financial statements. Should the Fund invest in the Subsidiary, that investment may not exceed 25% of the Fund’s total assets at each quarter end of the Fund’s fiscal year. Further, should the Fund invest in the Subsidiary, it would be expected to provide the Fund with exposure to A-Share returns within the limits of the federal tax requirements applicable to investment companies, such as the Fund.

The Subsidiary would be able to invest in futures contracts that would provide exposure to A-Shares, as well in other investments that would serve as margin or collateral or otherwise support the Subsidiary’s futures positions. The Subsidiary, accordingly, would be subject to the same general investment policies and restrictions as the Fund, except that unlike the Fund, which must invest in futures contracts in compliance with the requirements of Subchapter M of the Internal Revenue Code,<sup>12</sup> federal securities laws, and the CEA, the Subsidiary may invest without limitation in futures. References to the

<sup>11</sup> 7 U.S.C. 1. To the extent the Fund uses futures contracts, it will do so only in accordance with Rule 4.5 of the CEA. The Trust has filed a notice of eligibility for exclusion from the definition of the term “commodity pool operator” or “CPO” in accordance with Rule 4.5 of the CEA. Under amendments to Rule 4.5 adopted in February 2012, an investment adviser of a registered investment company may claim exclusion from registration as a CPO only if the registered investment company it advises uses futures contracts solely for “bona fide hedging purposes” or limits its use of futures contracts for non-bona fide hedging purposes in specified ways. Because the Fund does not expect to use futures contracts solely for “bona fide hedging purposes,” the Fund will be subject to rules that will require it to limit its use of positions in futures contracts in accordance with the requirements of amended Rule 4.5 unless the Adviser otherwise complies with CPO regulation. To the extent that the Fund is unable to rely on Rule 4.5, the Fund will be operated in accordance with CFTC rules; the Adviser already is registered as a CPO.

<sup>12</sup> 26 U.S.C. 851.

investment strategies and risks of the Fund include the investment strategies and risks of the Subsidiary.

The Fund may utilize the Subsidiary, but is not required to do so. If it is utilized, the Subsidiary will not be registered under the 1940 Act. As an investor in the Subsidiary, the Fund, as the Subsidiary's sole shareholder, would not have the protections offered to investors in registered investment companies. However, because the Fund would wholly own and control the Subsidiary, and the Fund and Subsidiary would be managed by the Adviser, the Subsidiary would not take action contrary to the interests of the Fund or the Fund's shareholders. The Board of Trustees of the Trust ("Board") has oversight responsibility for the investment activities of the Fund, including its investment in the Subsidiary, and the Fund's role as the sole shareholder of the Subsidiary. Also, in managing the Subsidiary's portfolio, the Adviser would be subject to the same investment restrictions and operational guidelines that apply to the management of the Fund. Changes in the laws of the United States, under which the Fund is organized, or of the Cayman Islands, under which the Subsidiary is organized, could result in the inability of the Fund or the Subsidiary to operate as described in the filing or in the Registration Statement and could negatively affect the Fund and its shareholders.

#### Other Investments

The Fund, under normal circumstances, may invest no more than 20% of its net assets in other investments such as money market instruments (including repurchase agreements, as described below), cash, and cash equivalents to provide liquidity or to collateralize its investments in futures contracts. The instruments in which the Fund may invest include: (i) Short-term obligations issued by the U.S. Government;<sup>13</sup> (ii) short-term negotiable obligations of commercial banks, fixed time deposits,<sup>14</sup> and bankers' acceptances<sup>15</sup> of U.S. and foreign banks and similar

<sup>13</sup> The Fund may invest in U.S. government obligations. Obligations issued or guaranteed by the U.S. Government, its agencies, and instrumentalities include bills, notes, and bonds issued by the U.S. Treasury, as well as "stripped" or "zero coupon" U.S. Treasury obligations representing future interest or principal payments on U.S. Treasury notes or bonds.

<sup>14</sup> Time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates.

<sup>15</sup> Banker's acceptances are time drafts drawn on commercial banks by borrowers, usually in connection with international transactions.

institutions; (iii) commercial paper rated at the date of purchase "Prime-1" by Moody's Investors Service, Inc. or "A-1+" or "A-1" by Standard & Poor's or, if unrated, of comparable quality, as the Adviser of the Fund determines; and (iv) money market mutual funds.

The Fund may invest in the securities of other investment companies (including money market funds) beyond the limits permitted under the 1940 Act, subject to certain terms and conditions set forth in a Commission exemptive order issued pursuant to Section 12(d)(1)(J) of the 1940 Act.<sup>16</sup>

The Fund may enter into repurchase agreements, which are agreements pursuant to which securities are acquired by the Fund from a third party with the understanding that they will be repurchased by the seller at a fixed price on an agreed date. These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest. Repurchase agreements may be characterized as loans secured by the underlying securities. The Fund may enter into repurchase agreements with (i) member banks of the Federal Reserve System having total assets in excess of \$500 million and (ii) securities dealers ("Qualified Institutions"). The Adviser will monitor the continued creditworthiness of Qualified Institutions.

The Fund may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date, and interest payment and have the characteristics of borrowing. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date.

#### Investment Restrictions

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are

held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund will not use futures for speculative purposes.

The Fund may not concentrate its investments (*i.e.*, invest more than 25% of the value of its net assets) in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. Government, its agencies, or instrumentalities.

The Fund intends to qualify for, and to elect to be treated as, a separate regulated investment company under Subchapter M of the Internal Revenue Code.<sup>17</sup>

The Fund will not invest in any non-U.S. equity securities (other than shares of the Subsidiary and Underlying ETFs listed on HKSE), to the extent that the Fund may not invest directly in China A-Shares through the QFII license, as described above. The Fund will not invest in options or swaps.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, is included in the Notice and Registration Statement, as applicable.<sup>18</sup>

### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>19</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>20</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>21</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system,

<sup>17</sup> 26 U.S.C. 851.

<sup>18</sup> See Notice and Registration Statement, *supra* notes 3 and 4, respectively.

<sup>19</sup> 15 U.S.C. 78f.

<sup>20</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> Investment Company Act Release No. 30238 (October 23, 2012) (File No. 812-13820).

and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>22</sup> which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.<sup>23</sup> On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), held by the Fund and the Subsidiary that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>24</sup> The NAV per Share of the Fund will be determined at the close of regular trading (normally 4:00 p.m. Eastern Time) every day the New York Stock Exchange is open. A basket composition file, which will include the security names and share quantities to deliver in exchange for Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the National Securities Clearing Corporation. 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. Information on the value and the constituents of the Benchmark may be found on the Web site of FTSE, the Benchmark's provider. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The intra-day, closing, and settlement prices of the portfolio investments (e.g., futures contracts and Underlying ETFs) are also readily available from the exchanges trading such securities or futures contracts, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.<sup>25</sup> In addition, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange may halt trading in the Shares if trading is not occurring in the securities, futures contracts, and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>26</sup> Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public

information regarding the actual components of the portfolio.<sup>27</sup> The Commission notes that the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange,<sup>28</sup> 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 Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that the Adviser is affiliated with a broker-dealer, and the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.<sup>29</sup>

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the

<sup>27</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

<sup>28</sup> The Exchange states that, while FINRA surveils trading on the Exchange pursuant to a regulatory services agreement, the Exchange is responsible for FINRA's performance under this regulatory services agreement.

<sup>29</sup> See *supra* note 5. An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of 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>22</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>23</sup> According to the Exchange, several major market data vendors widely disseminate Portfolio Indicative Values taken from CTA or other data feeds.

<sup>24</sup> On a daily basis, the Fund will disclose for each portfolio security, futures contract, and other financial instrument of the Fund and the Subsidiary the following information on the Fund's Web site: ticker symbol (if applicable); name of security, futures contract, and financial instrument; number of shares, if applicable, and dollar value of each security, futures contract, and financial instrument in the portfolio; and percentage weighting of the security, futures contract, and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

<sup>25</sup> See NYSE Arca Equities Rule 8.600(d)(1)(B).

<sup>26</sup> See NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). 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 in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. 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.

Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws and 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 applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value will be disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Exchange Act,<sup>30</sup> as provided by NYSE Arca Equities Rule 5.3.

(6) The Fund will not invest in any non-U.S. equity securities (other than shares of the Subsidiary and Underlying ETFs listed on HKSE), to the extent that the Fund may not invest directly in China A-Shares. To the extent that the Fund invests directly in China A-Shares, not more than 10% of the weight of the Fund's portfolio in the aggregate shall consist of such China A-Shares whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(7) The Fund will invest solely in SGX-listed futures contracts on the Benchmark. It is possible that the futures contracts on the Benchmark may become listed on other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement, at which time the Fund may invest in those futures contracts listed on such

exchanges. To the extent that the Fund or the Subsidiary were to invest in futures contracts on the Benchmark that were traded on exchanges other than SGX, not more than 10% of the weight of such futures contracts held by the Fund or the Subsidiary in the aggregate would consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. The Fund will not invest in options or swaps. The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

(8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment).

(9) Should the Fund invest in the Subsidiary, that investment may not exceed 25% of the Fund's total assets at each quarter end of the Fund's fiscal year.

(10) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.<sup>31</sup>

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>32</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>33</sup> that the proposed rule change (SR-NYSEArca-2013-56) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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**BILLING CODE 8011-01-P**

<sup>31</sup> The Commission notes that it does not regulate the market for futures in which the Fund plans to take positions. Limits on the positions that any person may take in futures may be directly set by the CFTC or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

<sup>32</sup> 15 U.S.C. 78f(b)(5).

<sup>33</sup> 15 U.S.C. 78s(b)(2).

<sup>34</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69913; File No. SR-FINRA-2013-027]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to Amendments to FINRA Rules 2360 and 4210 in Connection With OCC Cleared Over-the-Counter Options

July 2, 2013.

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> notice is hereby given that on June 28, 2013, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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 the Substance of the Proposed Rule Change

FINRA is proposing to amend: (1) FINRA Rule 2360 (Options) to treat over-the-counter ("OTC") options cleared by The Options Clearing Corporation ("OCC") as conventional options for purposes of the rule; and (2) FINRA Rule 4210 (Margin Requirements) to treat OTC options cleared by the OCC as listed options with respect to applicable margin requirements.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

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

<sup>30</sup> 17 CFR 240.10A-3.