

preceded immediately by prominent, plain English disclosure containing either: (a) An explanation of: (i) The circumstances under which an Applicant directly or indirectly may engage in principal transactions; (ii) the nature and significance of conflicts with its client's interests as a result of the transactions; and (iii) how an Applicant addresses those conflicts; or (b) a statement explaining that the client is consenting to principal transactions, followed by a cross-reference to a specific document provided to the client containing the disclosure in (a)(i)–(iii) above and to the specific page or pages on which such disclosure is located; provided, however, that if an Applicant requires time to modify its electronic systems to provide the specific page cross-reference required by clause (b), the Applicant may, while updating such electronic systems, and for no more than 90 days from the date of the Order, instead provide a cross-reference to a specific document provided to the client containing the disclosure in (a)(i)–(iii) above and to the specific section in such document in which such disclosure is located. *Transition provision:* To the extent that the Applicants obtained fully informed written revocable consent from an advisory client for purposes of rule 206(3)–3T(a)(3) prior to December 31, 2016, the Applicants may rely on this Order with respect to such client without obtaining additional prospective consent from such client.

5. The Applicants, prior to the execution of each transaction in reliance on this Order, will: (a) Inform the advisory client, orally or in writing, of the capacity in which they may act with respect to such transaction; and (b) obtain consent from the advisory client, orally or in writing, to act as principal for their own account with respect to such transaction.

6. The Applicants will send a written confirmation at or before completion of each such transaction that includes, in addition to the information required by rule 10b–10 under the Exchange Act, a conspicuous, plain English statement informing the advisory client that the Applicants: (a) Disclosed to the client prior to the execution of the transaction that the Applicants may be acting in a principal capacity in connection with the transaction and the client authorized the transaction; and (b) sold the security to, or bought the security from, the client for its own account.

7. The Applicants will send to the client, no less frequently than annually, written disclosure containing a list of all transactions that were executed in the client's account in reliance upon this

Order, and the date and price of each such transaction.

8. Each Applicant is a broker-dealer registered under section 15 of the Exchange Act and each account for which the Applicants rely on this Order is a brokerage account subject to the Exchange Act, and the rules thereunder, and the rules of the self-regulatory organization(s) of which it is a member.

9. Each written disclosure required as a condition to this Order will include a conspicuous, plain English statement that the client may revoke the written consent referred to in Condition 4 above without penalty at any time by written notice to the Applicants in accordance with reasonable procedures established by the Applicants, but in all cases such revocation must be given effect within 5 business days of the Applicants' receipt thereof.

10. The Applicants will maintain records sufficient to enable verification of compliance with the conditions of this Order. Such records will include, *without limitation:* (a) Documentation sufficient to demonstrate compliance with each disclosure and consent requirement under this Order; (b) in particular, documentation sufficient to demonstrate that, prior to the execution of each transaction in reliance on this Order, each Applicant informed the relevant advisory client of the capacity in which the Applicant may act with respect to the transaction and that it received the advisory client's consent (if the Applicant informs the client orally of the capacity in which it may act with respect to such transaction or obtains oral consent, such records may, for example, include recordings of telephone conversations or contemporaneous written notations); and (c) documentation sufficient to enable assessment of compliance by the Applicants with sections 206(1) and (2) of the Advisers Act in connection with its reliance on this Order.<sup>3</sup> In each case, such records will be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the Applicants, and be available for inspection by the staff of the Commission.

11. The Applicants will adopt written compliance policies and procedures reasonably designed to ensure, and each Applicant's chief compliance officer will monitor, the Applicant's

<sup>3</sup> For example, under sections 206(1) and (2), an adviser may not engage in any transaction on a principal basis with a client that is not consistent with the best interests of the client or that subrogates the client's interests to the adviser's own. *Cf.* Investment Advisers Act Release No. 2106 (Jan. 31, 2003) (adopting Rule 206(4)–6).

compliance with the conditions of this Order. Each Applicant's chief compliance officer will, on at least a quarterly basis, conduct testing reasonably sufficient to verify such compliance. Such written policies and procedures, monitoring and testing will address, *without limitation:* (a) Compliance by the Applicant with its disclosure and consent requirements under this Order; (b) the integrity and operation of electronic systems employed by the Applicant in connection with its reliance on this Order; (c) compliance by the Applicant with its recordkeeping obligations under this Order; and (d) whether there is any evidence of the Applicant engaging in "dumping" in connection with its reliance on this Order.<sup>4</sup> Each Applicant's chief compliance officer will document the frequency and results of such monitoring and testing, and each Applicant will maintain and preserve such documentation in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the Applicant, and be available for inspection by the staff of the Commission.

By the Commission.

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2016–29300 Filed 12–6–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 32375; 812–14685]**

### **CWM Advisors, LLC, et al.; Notice of Application**

December 1, 2016.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of

<sup>4</sup> See Report of the Securities and Exchange Commission, Investment Trusts and Investment Companies, H.R. Doc. No. 279, 76th Cong., 2d Sess., pt. 3, at 2581, 2589 (1939); Hearings on S. 3580 Before a Subcommittee of the Commission on Banking and Currency, 76th Cong., 3d Sess. 209, 212–23 (1940); Hearings on S. 3580 Before the Subcomm. of the Comm. on Banking and Currency, 76th Cong., 3d Sess. 322 (1940).

the Act. The requested order would permit (a) index-based series of certain open-end management investment companies (“Funds”) to issue shares redeemable in large aggregations only (“Creation Units”); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (“NAV”); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (“Funds of Funds”) to acquire shares of the Funds.

*Applicants:* CWM Advisors, LLC (“CWM”), a California limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 and Northern Lights Fund Trust IV (“Trust”), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series.

*Filing Dates:* The application was filed on August 10, 2016.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 27, 2016 and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090;

Applicants: CWM Advisors, LLC, 650 San Benito St, Ste. 130, Hollister, CA 95023; Northern Lights Fund Trust IV, 17605 Wright Street, Omaha, NE 68130.

**FOR FURTHER INFORMATION CONTACT:** Vanessa M. Meeks, Senior Counsel, or Parisa Haghshenas, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel’s Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission’s Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551–8090.

### Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds (“ETFs”).<sup>1</sup> Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an “Authorized Participant”, which will have signed a participant agreement with a broker-dealer registered under the Securities Exchange Act of 1934 (“Exchange Act”) (together with any future distributor, the “Distributor”). Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act (“Affiliated Person”), or an affiliated person of an Affiliated Person (“Second-Tier Affiliate”), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.<sup>2</sup>

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the

<sup>1</sup> Applicants request that the order apply to the initial series of the Trust and any additional series of the Trust, and any other open-end management investment company or series thereof, that may be created in the future (each, included in the term “Fund”), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an “Underlying Index”). Any Fund will (a) be advised by CWM or an entity controlling, controlled by, or under common control with CWM (each, an “Adviser”) and (b) comply with the terms and conditions of the application.

<sup>2</sup> Each Self-Indexing Fund will post on its Web site the identities and quantities of the investment positions that will form the basis for the Fund’s calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

application, purchasers will be required to purchase Creation Units by depositing specified instruments (“Deposit Instruments”), and shareholders redeeming their shares will receive specified instruments (“Redemption Instruments”). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund’s portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund’s prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fourteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to

sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.<sup>3</sup> The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the

<sup>3</sup> The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Brent J. Fields,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79445; File No. SR-NYSEArca-2016-152]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposal to Change Representation Regarding Investments by PowerShares DB Trust Issued Receipts Listed Under Commentary .02 to NYSE Arca Equities Rule 8.200

December 1, 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 November 18, 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 change a representation regarding investments by the following issues, which are currently listed on the Exchange under Commentary .02 to NYSE Arca Equities Rule 8.200 (Trust Issued Receipts): PowerShares DB Commodity Index Tracking Fund; PowerShares DB Energy Fund; PowerShares DB Oil Fund; PowerShares DB Precious Metals Fund;

<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.

PowerShares DB Gold Fund; PowerShares DB Silver Fund; PowerShares DB Base Metals Fund; PowerShares DB Agriculture Fund; PowerShares DB G10 Currency Harvest Fund; PowerShares DB US Dollar Index Bullish Fund; and PowerShares DB US Dollar Index Bearish Fund. 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 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 of the following securities under Commentary .02 to NYSE Arca Equities Rule 8.200 (Trust Issued Receipts): PowerShares DB Commodity Index Tracking Fund; PowerShares DB Energy Fund; PowerShares DB Oil Fund; PowerShares DB Precious Metals Fund; PowerShares DB Gold Fund; PowerShares DB Silver Fund; PowerShares DB Base Metals Fund; PowerShares DB Agriculture Fund; PowerShares DB G10 Currency Harvest Fund; PowerShares DB US Dollar Index Bullish Fund; and PowerShares DB US Dollar Index Bearish Fund (each a "Fund" and, collectively, the "Funds").<sup>4</sup>

<sup>4</sup> The Shares of each Fund represent beneficial ownership interests in the Fund's net assets, as described in the registration statements for the Funds. See the following registration statements on Form S-3 or Form S-1 under the Securities Act of 1933: (1) Registration statement on Form S-3ASR, PowerShares DB Commodity Index Tracking Fund (No. 333-203054, dated March 27, 2015); (2) registration statement on Form S-3, PowerShares DB G10 Currency Harvest Fund (No. 333-192126, December 6, 2013); (3) registration statement on Form S-3ASR, PowerShares DB US Dollar Index Bullish Fund (No. 333-207089-01, September 23, 2015); (4) registration statement on Form S-1, PowerShares DB US Dollar Index Bearish Fund (No. 333-193224, March 14, 2014); (5) registration