

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57776; File No. SR-NYSEArca-2008-43]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees and Charges for Exchange Services

May 5, 2008.

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 April 22, 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”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. NYSE Arca has filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 amend the section of its Schedule of Fees and Charges for Exchange Services (“Fee Schedule”) that applies to orders submitted by ETP Holders.<sup>5</sup> While changes to the Fee Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on May 1, 2008. The text of the proposed rule change is available at NYSE Arca, the Commission’s Public Reference Room, and <http://www.nyse.com>.

#### 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 Exchange 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. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The Exchange proposes to amend the Fee Schedule as it applies to ETP Holders as follows:

*Rebates on non-displayed Mid-Point Passive Liquidity Orders (“MPLs”).* All customers will receive a rebate of \$0.0010 per share for MPLs in securities listed on the New York Stock Exchange LLC (“NYSE”) posted to the Book. Customers that provide more than 30 million average daily share volume per month in NYSE-listed securities will receive a rebate of \$0.0015 per share for MPLs posted to the Book. The MPL is an undisplayed limit order that offers price improvement to customers by executing at the mid-point of the National Best Bid and Offer.

*New price tier in NYSE-listed securities.* Customers who provide 40 million average daily share volume per month will be charged a take fee of \$0.0029 per share in NYSE-listed securities. This is a reduction from the take fee of \$0.003 currently charged when taking NYSE-listed shares from the Book. Customers who provide 30 million average daily share volume per month will be charged a routing fee of \$0.0008 per share for orders routed to NYSE (a reduction from the \$0.001 per share otherwise charged for orders routed to NYSE) and will continue to pay \$0.0030 per share for orders routed to other exchanges.

*Elimination of rebate cap.* To reward active liquidity providers, the Exchange will eliminate the current rebate cap of 100 million daily average shares per month in NYSE-listed securities and 75 million daily average shares per month in securities listed on The NASDAQ Stock Market LLC (“Nasdaq”).

*Increased routing fees in Nasdaq-listed securities.* In response to recent fee increases by Nasdaq, the Exchange

will increase its routing fee in Nasdaq-listed securities from \$0.0026 to \$0.0029 per share for: (i) Customers who transact an average daily share volume per month greater than 60 million shares (including transactions that take liquidity, provide liquidity, or route to away market centers) and provide liquidity an average daily share volume per month greater than 30 million shares, and (ii) customers who transact an average daily share volume per month greater than 30 million shares (including transactions that take liquidity, provide liquidity, or route to away market centers) and provide liquidity an average daily share volume per month greater than 15 million shares.

The Exchange will also renumber certain footnotes contained within the Fee Schedule. While changes to the Fee Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on May 1, 2008.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it is intended to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposed fees and credits are reasonable. The proposed rates are part of the Exchange’s effort to attract and enhance participation on the Exchange, by offering increased credits and decreased fees where certain volume thresholds are satisfied. The Exchange also believes that the proposed changes to the Fee Schedule are equitable in that they apply uniformly to our Users. The increased routing fee in Nasdaq-listed securities seeks to recoup increased routing expenses resulting from Nasdaq fee increases.

##### 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.

<sup>6</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> 15 U.S.C. 78s(b)(3)(A).

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

<sup>5</sup> See NYSE Arca Equities Rule 1.1(n).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>9</sup> because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2008-43 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2008-43. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2008-43 and should be submitted on or before May 30, 2008.

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

**Florence E. Harmon,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57771; File No. SR-NASDAQ-2008-038]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade Shares of Certain PowerShares Actively Managed Exchange-Traded Funds Pursuant to Unlisted Trading Privileges**

May 2, 2008.

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 April 25, 2008, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. This order provides notice of filing of the

proposed rule change and approves it on an accelerated basis.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Nasdaq proposes to trade the shares ("Shares") of four funds of the PowerShares Actively Managed Exchange-Traded Fund Trust ("Trust") pursuant to unlisted trading privileges ("UTP"). The text of the proposed rule change is available at Nasdaq's principal office, the Commission's Public Reference Room, and <http://www.nasdaq.complinet.com>.

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Nasdaq proposes to trade the Shares of the following funds pursuant to UTP: (1) The PowerShares Active AlphaQ Fund; (2) the PowerShares Active Alpha Multi-Cap Fund; (3) the PowerShares Active Mega-Cap Portfolio; and (4) the PowerShares Active Low Duration Portfolio (collectively, the "Funds"). The Commission has recently approved the listing and trading of the Shares of the Funds on NYSE Arca Equities, Inc.<sup>3</sup> The Shares are offered by the Trust, a business trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.<sup>4</sup> The Trust currently consists of the Funds,

<sup>3</sup> See Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25) ("NYSE Arca Proposal").

<sup>4</sup> The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). On November 26, 2007, the Trust filed with the Commission a Registration Statement for the Funds on Form N-1A under the Securities Act of 1933 and under the 1940 Act (File Nos. 333-147622 and 811-22148) ("Registration Statement"). On November 16, 2007, the Trust filed with the Commission an Amended and Restated Application ("Application") for an Amended Order under Sections 6(c) and 17(b) of the 1940 Act. See Investment Company Act Release No. 28140 (February 1, 2008), 73 FR 7328 (February 7, 2008) (File No. 812-3386).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</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.