

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72464; File No. SR-NYSEArca-2014-45]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Governing the Continued Listing and Trading of Shares of the PowerShares Insured California Municipal Bond Portfolio, PowerShares Insured National Municipal Bond Portfolio, and PowerShares Insured New York Municipal Bond Portfolio

June 25, 2014.

#### I. Introduction

On April 25, 2014, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change relating to the listing and trading of shares (“Shares”) of the following series of Investment Company Units (“Units”): PowerShares Insured California Municipal Bond Portfolio (“CA Portfolio”); PowerShares Insured National Municipal Bond Portfolio (“National Portfolio”); and PowerShares Insured New York Municipal Bond Portfolio (“NY Portfolio,” and collectively “Municipal Bond Portfolios” or “Funds”). The proposed rule change was published for comment in the *Federal Register* on May 15, 2014.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

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

The Funds are series of the PowerShares Exchange-Traded Fund Trust II (“Trust”).<sup>5</sup> Invesco PowerShares Capital Management LLC is the investment adviser (“Adviser”) for the Funds. Invesco Distributors, Inc. is the Funds’ distributor. The Bank of New

York Mellon is the administrator, custodian and fund accounting and transfer agent for each Fund.

Currently, the Exchange lists and trades the Shares under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, which governs the listing and trading of Units based on fixed income securities indexes. As described further below, the Exchange states that it recently became aware that the indexes underlying the Funds do not meet all of the generic listing criteria applicable to these Units. Accordingly, by this proposed rule change, NYSE Arca seeks to permit the continued listing and trading of the Shares. Additionally, and as discussed further below, in the future, the Exchange expects that the indexes underlying the Funds will be changed again, and the Exchange states that those new indexes also fail to meet the generic listing criteria of NYSE Arca Equities Rule 5.2(j)(3), Commentary .02. Accordingly, by this proposed rule change, NYSE Arca also seeks to permit the listing and trading of the Shares once the Funds transition to the new underlying indexes.

#### The Funds’ Current Underlying Indexes

The Exchange states that, on May 28, 2009, the municipal bond indexes underlying the CA Portfolio; the National Portfolio; and the NY Portfolio were changed to the Merrill Lynch California Insured Long-Term Core Plus Municipal Securities Index, the Merrill Lynch National Insured Long-Term Core Plus Municipal Securities Index, and the Merrill Lynch New York Insured Long-Term Core Plus Municipal Securities Index, respectively.<sup>6</sup> According to the Exchange, on September 25, 2009, the names of the indexes underlying the Municipal Bond Portfolios again were changed to the BofA Merrill Lynch California Insured Long-Term Core Plus Municipal Securities Index (“CA Index”), the BofA Merrill Lynch National Insured Long-Term Core Plus Municipal Securities Index (“National Index”), and the BofA Merrill Lynch New York Insured Long-Term Core Plus Municipal Securities

Index, respectively<sup>7</sup> (“NY Index”, and collectively, “Municipal Bond Indexes”).<sup>8</sup>

According to the Exchange, the Municipal Bond Indexes meet all of the applicable requirements for the generic listing under NYSE Arca Equities Rule 5.2(j)(3) except for the requirement of Commentary .02(a)(2), which requires that components that in the aggregate account for 75% or more of the weight of the index or portfolio each have a minimum original principal amount outstanding of \$100 million or more. Specifically, as of March 6, 2014, approximately 34.84%, and 37.16%, and 59.22% of the weight of the components of the CA Index, National Index and NY Index, respectively, had a minimum original principal amount outstanding of \$100 million or more.<sup>9</sup>

#### The CA Portfolio

The CA Portfolio seeks investment results that generally correspond (before fees and expenses) to the price and yield performance of the CA Index.<sup>10</sup> The CA Index is designed to track the performance of U.S. dollar-denominated, investment grade, tax-exempt debt publicly issued by California or U.S. territories (including Puerto Rico), or their political subdivisions, in the U.S. domestic market and includes approximately 267 bonds (as of January 31, 2014). The CA Index is adjusted monthly.

As of January 31, 2014, the total dollar amount outstanding of issues in the CA Index was approximately \$17.201 billion and the average dollar amount outstanding of issues in the CA Index was approximately \$64.42 million. The most heavily weighted component

<sup>7</sup> BofA Merrill Lynch is the index provider (“Index Provider”) with respect to the Municipal Bond Indexes and the “New Municipal Bond Indexes,” which are described below. The Index Provider is a broker-dealer and has implemented a firewall with respect to and will maintain procedures designed to prevent the use and dissemination of material non-public information regarding the Municipal Bond Indexes and New Municipal Bond Indexes. See Notice, *supra* note 4, 79 FR at 27951, n.8.

<sup>8</sup> The September 25, 2009, name changes were reflected in a supplement dated September 25, 2009 to the Municipal Bond Portfolios’ prospectus dated February 27, 2009. See Notice, *supra* note 4, 79 FR at 27951, n.9.

<sup>9</sup> See *id.*

<sup>10</sup> Normally, the CA Portfolio invests at least 80% of its total assets in the securities that compose the CA Index and generally expects to so invest at least 90% of its total assets. The CA Portfolio reserves the right to invest up to 20% of its assets in certain futures, options and swap contracts, cash and cash equivalents, including money market funds, as well as in municipal securities not included in the CA Index to the extent that the Adviser believes investment in such instruments will facilitate the CA Portfolio’s ability to achieve its investment objective.

<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.

<sup>4</sup> See Securities Exchange Act Release No. 72139 (May 9, 2014), 79 FR 27950 (“Notice”).

<sup>5</sup> On February 27, 2014, the Trust filed a post-effective amendment on Form 485 under the Securities Act of 1933 (15 U.S.C. 77a) (“1933 Act”) to its registration statement on Form N-1A under the 1933 Act and the Investment Company Act of 1940 (“1940 Act”) (15 U.S.C. 80a-1) (File Nos. 333-138490 and 811-21977) (the “Registration Statement”). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 27841 (May 25, 2007) (File No. 812-13335) (“Exemptive Order”).

<sup>6</sup> See Notice, *supra* note 4, 79 FR at 27951. The changes to the indexes underlying the Municipal Bond Portfolios were reflected in a supplement on Form 497 under the 1933 Act, dated May 28, 2009 (“May 28, 2009 Supplement”) to the Municipal Bond Portfolios’ prospectus dated February 27, 2009. See Notice, *supra* note 4, 79 FR at 27951, n.7. The previous names of the indexes underlying the Municipal Bond Portfolios were the Merrill Lynch California Insured Long-Term Core Municipal Securities Index, Merrill Lynch National Insured Long-Term Core Municipal Securities Index, and Merrill Lynch New York Insured Long-Term Core Municipal Securities Index, respectively. See Notice, *supra* note 4, 79 FR at 27951, n.7.

represented 3.53% of the weight of the CA Index and the five most heavily weighted components represented 9.94% of the weight of the CA Index. The CA Index is composed of approximately 267 issues and 127 unique issuers. In addition, the average daily notional trading volume for CA Index components for the calendar year 2013 was approximately \$27.45 million and the sum of the notional trading volumes for the same period was approximately \$6.9 billion.

#### *The National Portfolio*

The National Portfolio seeks investment results that generally correspond (before fees and expenses) to the price and yield performance of the National Index. The National Index is designed to track the performance of U.S. dollar-denominated investment grade insured tax-exempt debt publicly issued by U.S. states and territories (including Puerto Rico), or their political subdivision, in the U.S. domestic market and includes approximately 1,238 bonds (as of January 31, 2014). The National Index is adjusted monthly.<sup>11</sup>

As of January 31, 2014, the total dollar amount outstanding of issues in the National Index was approximately \$78.69 billion and the average dollar amount outstanding of issues in the National Index was approximately \$63.56 million. Further, the most heavily weighted component represented 0.88% of the weight of the National Index and the five most heavily weighted components represented 3.51% of the weight of the National Index. The National Index is composed of approximately 1,238 issues and 521 unique issuers. In addition, the average daily notional trading volume for National Index components for the calendar year 2013 was approximately \$101.99 million and the sum of the notional trading volumes for the same period was approximately \$25.7 billion.

#### *The NY Portfolio*

According to the Registration Statement, the NY Portfolio seeks investment results that generally correspond (before fees and expenses) to the price and yield performance of the

<sup>11</sup> Generally, the National Portfolio will invest at least 80% of its total assets in the securities that compose the National Index and generally expects to so invest at least 90% of its total assets. The National Portfolio reserves the right to invest up to 20% of its assets in certain futures, options and swap contracts, cash and cash equivalents, including money market funds, as well as in municipal securities not included in the National Index to the extent that the Adviser believes such investments will facilitate the National Portfolio's ability to achieve its investment objective.

NY Index. The NY Index is designed to track the performance of U.S. dollar-denominated, investment grade, tax-exempt debt publicly issued by New York or U.S. territories (including Puerto Rico), or their political subdivisions, included in the U.S. domestic market and includes approximately 130 bonds (as of January 31, 2014). The NY Index is adjusted monthly.<sup>12</sup>

As of January 31, 2014, the total dollar amount outstanding of issues in the NY Index was approximately \$17.76 billion and the average dollar amount outstanding of issues in the NY Index was approximately \$90.58 million. Further, the most heavily weighted component represented 6.14% of the weight of the NY Index and the five most heavily weighted components represented 20.15% of the weight of the NY Index. The NY Index is composed of approximately 130 issues and 25 unique issuers. In addition, the average daily notional trading volume for NY Index components for the calendar year 2013 was approximately \$19.41 million and the sum of the notional trading volumes for the same period was approximately \$4.89 billion.

#### *Future Changes to the Funds and the Indexes Underlying the Funds*

As stated above, currently the Municipal Bond Indexes underlie the Municipal Bond Portfolios. The Trust has proposed to its shareholders to, among other things, change the indexes underlying the Funds (and the name of the Funds). On May 10, 2013, the Trust filed with the Commission on Schedule 14A a definitive proxy statement and notice of shareholders meeting calling a meeting on June 20, 2013 ("Proxy Statement").<sup>13</sup> According to the shareholder proposal, each Fund would change its underlying index to one that is composed of both insured and uninsured municipal securities. Following such change, the proposed underlying indexes for the Funds would be: the BofA Merrill Lynch California Long-Term Core Plus Municipal Securities Index ("New CA Index"); BofA Merrill Lynch National Long-Term Core Plus Municipal Index ("New

<sup>12</sup> Normally, the NY Portfolio will invest at least 80% of its total assets in the securities that compose the NY Index. The NY Portfolio reserves the right to invest up to 20% of its assets in certain futures, options and swap contracts, cash and cash equivalents, including money market funds, as well as in municipal securities not included in the NY Index to the extent that the Adviser believes such investments will facilitate the NY Portfolio's ability to achieve its investment objective.

<sup>13</sup> See Definitive Proxy Statement dated May 10, 2013 on Schedule 14A (Proxy Statement Pursuant to Section 14(a) of the Act) (File No. 811-21977).

National Index"); and BofA Merrill Lynch New York Long-Term Core Plus Municipal Securities Index ("New NY Index," and collectively, "New Municipal Bond Indexes," and together with the Municipal Bond Indexes, the "Underlying Indexes").

In addition, each Fund would change its name by removing the word "Insured" and adding the term "AMT-Free" to reflect that the proposed underlying indexes would include primarily municipal securities that are exempt from the alternative minimum tax.<sup>14</sup> After such change, the names of the Funds would be PowerShares California AMT-Free Municipal Bond Portfolio ("New CA Portfolio"), PowerShares National AMT-Free Municipal Bond Portfolio ("New National Portfolio") and PowerShares New York AMT-Free Municipal Bond Portfolio ("New NY Portfolio"), respectively. All components of each of the Municipal Bond Indexes and New Municipal Bond Indexes currently are rated as investment grade (A3 or higher by Moody's Investors Service).<sup>15</sup>

The shareholders of each Fund have approved these changes contingent upon approval of this proposed rule change.<sup>16</sup>

Currently, the New Municipal Bond Indexes do not meet the generic listing criteria of NYSE Arca Equities Rule 5.2(j)(3). Accordingly, the Exchange submitted this proposed rule change to permit the continued listing and trading the Shares in the event they overlie the New Municipal Bond Indexes. Specifically, the Exchange states that the New Municipal Bond Indexes meet all of the requirements of the generic listing criteria of NYSE Arca Equities Rule 5.2(j)(3), except for those set forth in Commentary .02(a)(2);<sup>17</sup> as of January 31, 2014, approximately 59.51%, 46.90%, and 60.63% of the weight of the components of the New CA Index, New National Index and New NY Index,

<sup>14</sup> In connection with the addition of the term "AMT-Free" to each Fund's name, the Trust's Board of Trustees has adopted a non-fundamental investment policy for each Fund normally to invest at least 80% of its net assets, including the amount of any borrowings for investment purposes, in municipal securities that are exempt from the federal alternative minimum tax.

<sup>15</sup> See Notice, *supra*, note 4 at 27955.

<sup>16</sup> The changes described herein with respect to use of the New Municipal Bond Indexes would be effective upon filing with the Commission of another amendment to the Trust's Registration Statement, or a prospectus supplement reflecting these changes. The Adviser represents that the Adviser and Sub-Adviser have managed and will continue to manage the Funds in the manner described in the Registration Statement and will not implement the changes described herein until this proposed rule change is operative.

<sup>17</sup> See text following n.8, *supra* (describing the requirement of Commentary .02(a)(2)).

respectively, had a minimum original principal amount outstanding of \$100 million or more.

#### *The New CA Portfolio*

The New CA Portfolio would generally seek investment results that correspond (before fees and expenses) to the price and yield performance of the New CA Index.<sup>18</sup> The New CA Index is designed to track the performance of U.S. dollar-denominated, investment grade, tax-exempt debt publicly issued by California or U.S. territories (including Puerto Rico), or their political subdivisions, in the U.S. domestic market and includes approximately 1,086 bonds (as of January 31, 2014). The New CA Index is adjusted monthly.

As of January 31, 2014, the total dollar amount outstanding of issues in the New CA Index was approximately \$100.76 billion and the average dollar amount outstanding of issues in the Index was approximately \$92.81 million. Further, the most heavily weighted component represented 1.39% of the weight of the New CA Index and the five most heavily weighted components represented 5.17% of the weight of the CA Index. The New CA Index is composed of approximately 1,086 issues and 229 unique issuers. In addition, the average daily notional trading volume for New CA Index components for the calendar year 2013 was approximately \$364.22 million and the sum of the notional trading volumes for the same period was approximately \$91.78 billion.

#### *The New National Portfolio*

The New National Portfolio generally would seek investment results that correspond (before fees and expenses) to the price and yield performance of the New National Index.<sup>19</sup> The New

National Index is designed to track the performance of U.S. dollar-denominated investment grade tax-exempt debt publicly issued by U.S. states or U.S. territories (including Puerto Rico), or its political subdivision, in the U.S. domestic market and includes approximately 5,476 bonds (as of January 31, 2014). The New National Index is adjusted monthly.

As of January 31, 2014, the total dollar amount outstanding of issues in the New National Index was approximately \$ 394.04 billion and the average dollar amount outstanding of issues in the New National Index was approximately \$71.96 million. Additionally, the most heavily weighted component represented 0.34% of the weight of the New National Index and the five most heavily weighted components represented 1.47% of the weight of the New National Index. The New National Index is composed of approximately 5,476 issues and 1,259 unique issuers. Further, the average daily notional trading volume for New National Index components for the calendar year 2013 was approximately \$1.26 billion and the sum of the notional trading volumes for the same period was approximately \$317.73 billion.

#### *The New NY Portfolio*

The New NY Portfolio would seek investment results that correspond (before fees and expenses) generally to the price and yield performance of the New NY Index.<sup>20</sup> The New NY Index is designed to track the performance of U.S. dollar-denominated, investment grade, tax-exempt debt publicly issued by New York or U.S. territories (including Puerto Rico), or their political subdivisions, included in the U.S. domestic market includes approximately 952 bonds (as of January 31, 2014).

As of January 31, 2014, the total dollar amount outstanding of issues in the New NY Index was approximately \$86.75 billion and the average dollar amount outstanding of issues in the New NY Index was approximately \$91.13 million. Further, the most heavily weighted component represents 1.61% of the weight of the New NY Index and the five most heavily weighted components represented

5.07% of the weight of the New NY Index. The New NY Index is composed of approximately 952 issues and 67 unique issuers. In addition, the average daily notional trading volume for New NY Index components for the calendar year 2013 was approximately \$334.68 million and the sum of the notional trading volumes for the same period was approximately \$84.34 billion.

Additional information regarding the Trust, the Funds, the Underlying Indexes, 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 Statements, as applicable.<sup>21</sup>

### **III. Discussion and Commission Findings**

After careful review, the Commission finds that the Exchange's proposal to continue listing and trading the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>22</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,<sup>23</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 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.

The Commission finds that the proposal to continue trading the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,<sup>24</sup> which sets forth Congress' 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 is available via the Consolidated Tape Association ("CTA") high-speed line.<sup>25</sup> The values of Underlying Indexes are calculated and disseminated at least once daily,

<sup>18</sup> Normally, the New CA Portfolio would invest at least 80% of its total assets in the securities that compose the New CA Index, and generally expects to so invest at least 90% of its total assets. The New CA Portfolio reserves the right to invest up to 20% of its assets in certain futures, options and swap contracts, cash and cash equivalents, including money market funds, as well as in municipal securities not included in the New CA Index to the extent that the Adviser believes investment in such instruments would facilitate the New CA Portfolio's ability to achieve its investment objective.

<sup>19</sup> Normally, the New National Portfolio would invest at least 80% of its total assets in the securities that compose the New National Index and generally expects to so invest at least 90% of its total assets. The New National Portfolio reserves the right to invest up to 20% of its assets in certain futures, options and swap contracts, cash and cash equivalents, including money market funds, as well as in municipal securities not included in the New National Index to the extent that the Adviser believes such investments would facilitate the New National Portfolio's ability to achieve its investment objective.

<sup>20</sup> Normally, the New NY Portfolio would invest at least 80% of its total assets in the securities that compose the New NY Index. The New NY Portfolio reserves the right to invest up to 20% of its assets in certain futures, options and swap contracts, cash and cash equivalents, including money market funds, as well as in municipal securities not included in the New NY Index to the extent that the Adviser believes such investments will facilitate the New NY Portfolio's ability to achieve its investment objective.

<sup>21</sup> See Notice and Registration Statement, *supra* notes 4 and 5, respectively.

<sup>22</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>25</sup> See Notice, *supra* note 4 at 27957.

and the components of the Underlying Indexes and their respective percentage weightings are available from major market data vendors.<sup>26</sup> The intraday indicative values (“IIVs”) for the Shares are disseminated by one or more major market data vendors and updated at least every 15 seconds during the Exchange’s Core Trading Session, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(c).<sup>27</sup> Information regarding market price and trading volume of the Shares is continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services.<sup>28</sup> The Funds’ Web site ([www.invescopowershares.com](http://www.invescopowershares.com)) includes a form of the prospectus for the Funds, information relating to net asset value (“NAV”), and other applicable quantitative information.<sup>29</sup> The Funds’ portfolio holdings are disclosed on the Funds’ Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day.<sup>30</sup>

The Commission believes that the proposal 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 Exchange states that the Index Provider is a broker-dealer and has implemented a firewall and will maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Underlying Indexes.<sup>31</sup>

With respect to trading halts, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.<sup>32</sup> In addition, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds.<sup>33</sup> Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.<sup>34</sup> The Exchange represents that, if the IIV or the values of the Underlying Indexes are not being disseminated as required, the Exchange may halt trading during the day in

which the interruption to the dissemination of the applicable IIV or values of the Underlying Indexes occurs.<sup>35</sup> If the interruption to the dissemination of the applicable IIV or values of the Underlying Indexes persists past the trading day in which it occurred, the Exchange will halt trading.<sup>36</sup> Moreover, trading in the Shares will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 7.34, which sets forth circumstances under which Shares may be halted.<sup>37</sup>

The Exchange states that it has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.<sup>38</sup> The Exchange may obtain information via the Intermarket Surveillance Group (“ISG”) from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.<sup>39</sup> Based on the Exchange’s representations regarding the number of issues and issuers in each index, the total and average dollar amount outstanding of the index components, the average daily notional trading volume for the index components in 2013, the total notional trading volume for the index components in 2013, and the concentration of the components in each index, the Commission believes that the Underlying Indexes are sufficiently broad-based and liquid to deter potential manipulation.

In support of this proposal, the Exchange has made additional representations, including:

(1) Except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares of the Funds currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3).

(2) The continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares of the Funds.

(3) The Shares will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the

dissemination of key information such as the value of the Underlying Indexes and the applicable value of the IIV, rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers, and the Information Bulletin to Equity Trading Permit Holders (each as described in more detail herein and in the Notice and Registration Statements, as applicable), as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.

(4) For continued listing of the Shares, the Trust is required to comply with Rule 10A–3 under the Exchange Act.

(5) Each Fund generally will invest at least 80% of its assets in the securities that compose each Fund’s respective underlying index.

(6) Each Fund may at times invest up to 20% of its assets in certain futures, options and swap contracts, cash and cash equivalents, including money market funds, as well as in municipal securities not included in a Fund’s respective underlying index to the extent that the Adviser believes investment in such instruments will facilitate the Fund’s ability to achieve its investment objective.

This order is based on all of the Exchange’s representations, including those set forth above and in the Notice.

Lastly, the Commission notes that the approval of this proposed rule change permits only the prospective continued listing of the Shares. No retroactive relief is granted to the Exchange regarding its listing and trading of the Shares during the time period in which not all of the generic listing criteria in Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3) were satisfied.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>40</sup> that the proposed rule change (SR–NYSEArca–2014–45), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

**Kevin M. O’Neill,**  
Deputy Secretary.

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<sup>26</sup> See *id.*

<sup>27</sup> See *id.* at 27956.

<sup>28</sup> See *id.* at 27958.

<sup>29</sup> See *id.* at 27957.

<sup>30</sup> See *id.*

<sup>31</sup> See *id.* at 27956.

<sup>32</sup> See *id.*

<sup>33</sup> See *id.*

<sup>34</sup> See *id.*

<sup>35</sup> See *id.*

<sup>36</sup> See *id.*

<sup>37</sup> See *id.*

<sup>38</sup> See *id.*

<sup>39</sup> See *id.*

<sup>40</sup> 15 U.S.C. 78s(b)(2).

<sup>41</sup> 17 CFR 200.30–3(a)(12).