

proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is March 12, 2016. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,<sup>5</sup> designates April 26, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-BATS-2016-02).

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

**Robert W. Errett,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77328; File No. TP 16-4]

### Order Granting Limited Exemptions From Exchange Act Rule 10b-17 and Rules 101 and 102 of Regulation M to PowerShares DWA Tactical Multi-Asset Income Portfolio Pursuant to Exchange Act Rule 10b-17(b)(2) and Rules 101(d) and 102(e) of Regulation M

March 9, 2016.

By letter dated March 9, 2016 (the "Letter"), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for PowerShares Exchange-Traded Fund Trust II (the "Trust"), on behalf of the Trust, PowerShares DWA Tactical Multi-Asset Income Portfolio (the "Fund"), any national securities exchange on or through which shares issued by the Fund ("Shares") may subsequently trade, Invesco Distributors, Inc. (the "Distributor"), and persons or entities engaging in transactions in Shares (collectively, the "Requestors"), requested exemptions, or interpretive or no-action relief, from Rule 10b-17 of the Securities Exchange Act of 1934, as amended ("Exchange Act"), and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of

aggregations of Shares of at least 50,000 shares ("Creation Units").

The Trust is registered with the Securities and Exchange Commission ("Commission") under the Investment Company Act of 1940, as amended ("1940 Act"), as an open-end management investment company. The Fund seeks to track the performance of the underlying index, the Dorsey Wright® Multi-Asset Income Index (the "Index"). The Fund intends to operate as an "ETF of ETFs" by seeking to track the performance of its underlying Index through, under normal circumstances,<sup>1</sup> investing at least 90% of its total assets<sup>2</sup> in up to five ETFs that comprise the Index. Except for the fact that the Fund will operate as an ETF of ETFs, the Fund will operate in a manner identical to the ETFs that are included in the Index.

The Requestors represent, among other things, the following:

- Shares of the Fund will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The Trust will continuously redeem Creation Units at net asset value ("NAV"), and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Fund will be listed and traded on the NASDAQ Stock Market LLC or another exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act (the "Exchange");<sup>3</sup>
- All ETFs in which the Fund is invested will meet all conditions set

<sup>1</sup> The term "under normal circumstances" includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the securities 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-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

<sup>2</sup> The remaining ten percent of the Fund's total assets may be invested in securities (including other underlying funds) not included in the underlying Index and in money market instruments or funds that invest exclusively in money market instruments, subject to applicable limitations under the 1940 Act. Regardless of the representation that the Fund generally will invest at least 90% of its total assets in securities that comprise the underlying Index, the Fund seeks to have a tracking error of less than five percent in any given month over a one-year period.

<sup>3</sup> Further, the Letter states that should the Shares also trade on a market pursuant to unlisted trading privileges, such trading will be conducted pursuant to self-regulatory organization rules that have become effective pursuant to Section 19(b) of the Exchange Act.

forth in a relevant class relief letter,<sup>4</sup> will have received individual relief from the Commission, or will be able to rely upon individual relief even though they are not named parties (for example, a no-action letter);

- At least 70% of the Fund is comprised of component securities that will meet the minimum public float and minimum average daily trading volume thresholds under the "actively-traded securities" definition found in Regulation M for excepted securities during each of the previous two months of trading prior to formation of the Fund;

- All of the components of the Index will have publicly available last sale trade information;

- The intra-day proxy value of the Fund per share and the value of the Index will be publicly disseminated by a major market data vendor throughout the trading day;

- On each business day before the opening of business on the Exchange, the Fund's custodian, through the National Securities Clearing Corporation, will make available the list of the names and the numbers of securities and other assets of the Fund's portfolio that will be applicable that day to creation and redemption requests;

- The Exchange or other market information provider will disseminate (i) continuously every 15 seconds throughout the trading day, through the facilities of the consolidated tape, the market value of a Share, and (ii) every 15 seconds throughout the trading day, a calculation of the intra-day indicative value of a Share;

- The arbitrage mechanism will be facilitated by the transparency of the Fund's portfolio and the availability of the intra-day indicative value, the liquidity of securities held by the Fund, and the ability to acquire such securities, as well as the arbitrageurs' ability to create workable hedges;

<sup>4</sup> Exchange Act Rel. No. 67215 (June 19, 2012); 77 FR 37941 (June 25, 2012); Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee (November 21, 2005); Letter from Raquel L. Russell, Branch Chief, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP (June 21, 2006); Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (October 24, 2006); Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Esq., Willkie Farr & Gallagher LLP (April 9, 2007); Letter from Josephine Tao, Assistant Director, Division of Trading and Markets, to Domenico Pugliese, Esq., Paul, Hastings, Janofsky & Walker LLP (June 27, 2007); see also Staff Legal Bulletin No. 9, "Frequently Asked Questions About Regulation M" (April 12, 2002) (regarding actively-managed ETFs).

<sup>5</sup> *Id.*

<sup>6</sup> 17 CFR 200.30-3(a)(31).

- The Fund will invest solely in liquid securities;
- The Fund will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The Trust believes that arbitrageurs are expected to take advantage of price variations between the Fund's market price and its NAV; and
- A close alignment between the market price of Shares and the Fund's NAV is expected.

### Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rules 101 and 102 of Regulation M, the Requestors may not rely upon those exceptions for the Shares.<sup>5</sup> However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares of the Fund as described in more detail below.

### Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any "distribution participant" and its "affiliated purchasers" from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security that is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the Rule. Rule 100 of Regulation M defines "distribution" to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution, and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and the facts presented in the Letter,

<sup>5</sup> While ETFs operate under exemptions from the definitions of "open-end company" under Section 5(a)(1) of the 1940 Act and "redeemable security" under Section 2(a)(32) of the 1940 Act, the Fund and its securities do not meet those definitions.

particularly that the Trust is a registered open-end management investment company that will continuously redeem at the NAV Creation Unit size aggregations of the Shares of the Fund and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors to grant the Trust an exemption under paragraph (d) of Rule 101 of Regulation M with respect to the Fund, thus permitting persons participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.<sup>6</sup>

### Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, and any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and the facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem at the NAV Creation Unit size aggregations of Shares of the Fund and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

### Rule 10b-17

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b-17(b). Based on the representations and the facts presented in the Letter, and subject to the conditions below, the Commission finds that it is appropriate in the public

<sup>6</sup> Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an "attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period" within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

interest, and consistent with the protection of investors, to grant the Trust a conditional exemption from Rule 10b-17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10b-17 will not be implicated.<sup>7</sup>

### Conclusion

*It is hereby ordered*, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.

*It is further ordered*, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

*It is further ordered*, pursuant to Rule 10b-17(b)(2), that the Trust, based on the representations and the facts presented in the Letter and subject to the conditions below, is exempt from the requirements of Rule 10b-17 with respect to the transactions in the Shares of the Fund.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b-17, except for Rule 10b-17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. This exemption is based on the facts presented and the representations made in the Letter. Any different facts or representations may

<sup>7</sup> We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical in light of the Fund's nature because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

require a different response. Persons relying upon this exemptive relief shall discontinue transactions involving the Shares of the Fund, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors, and as is the case with all preceding letters, particularly with respect to the close alignment between the market price of Shares and the Fund's NAV. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b-5 thereunder.

Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This Order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to, the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Robert W. Errett,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, March 17, 2016 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Piwowar, as duty officer, voted to consider the items

listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters;

Opinion; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: March 10, 2016.

**Lynn M. Powalski,**

Deputy Secretary.

[FR Doc. 2016-05879 Filed 3-11-16; 11:15 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77331; File No. SR-CHX-2016-01]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Adopt and Amend Rules To Permit the Exchange To Initiate CHX SNAP<sup>SM</sup> Cycles

March 9, 2016.

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 February 26, 2016, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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

CHX proposes to adopt and amend rules to permit the Exchange to initiate CHX SNAP<sup>SM</sup> cycles. The text of this proposed rule change is available on the Exchange's Web site at [http://www.chx.com/rules/proposed\\_](http://www.chx.com/rules/proposed_)

*rules.htm*, 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 proposes to adopt and amend rules to permit the Exchange to initiate CHX SNAP ("SNAP") Cycles.<sup>3</sup> Currently, a SNAP Cycle may only be initiated upon receipt of a valid limit order marked Start SNAP ("Start SNAP order") submitted by an order sender.<sup>4</sup> The Exchange now proposes to permit the Exchange to initiate a SNAP Cycle, without receipt of a valid Start SNAP order, if a periodic *pro forma* SNAP review of the contents of the CHX book, SNAP Auction Only Order ("AOO") Queue<sup>5</sup> and Protected Quotations of external markets, in a given security, show that the projected execution size that would result if a SNAP Cycle were to be initiated at that moment would meet certain minimum size and notional value requirements, as applicable ("Exchange-initiated SNAP"). This proposal is designed to permit marketable, yet inactive passive liquidity of a substantial size (*i.e.*, inactive SNAP AOOs), to execute via SNAP in the absence of a Start SNAP order. The proposed rule change does not modify the operation of SNAP Cycles in any other way.

<sup>3</sup> See Securities Exchange Act Release No. 76262 (October 26, 2015), 80 FR 67440 (November 2, 2015) (SR-CHX-2015-05); see also Securities Exchange Act Release No. 76087 (October 6, 2015), 80 FR 61540 (October 13, 2015); see also Securities Exchange Act Release No. 75346 (July 1, 2015), 80 FR 39172 (July 8, 2015) (SR-CHX-2015-03). The approved rule changes are not yet operative and will become operative upon two weeks' notice by the Exchange to its Participants.

<sup>4</sup> See *supra id.*; see also CHX Article 1, Rule 2(h)(1); see also CHX Article 18, Rule 1(b)(1).

<sup>5</sup> See *supra* note 3; see also CHX Article 20, Rule 8(b)(2)(A).

<sup>8</sup> 17 CFR 200.30-3(a)(6) and (9).

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

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