

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79767; File No. SR-NYSEArca-2016-62]

### Self-Regulatory Organizations; NYSEArca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to a Change to the Underlying Index for the PowerShares Build America Bond Portfolio

January 10, 2017.

#### I. Introduction

On May 3, 2016, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to: (1) Propose changes to the index underlying the PowerShares Build America Bond Portfolio (“Fund”) and the name of the Fund and (2) permit the continued listing and trading of the shares (“Shares”) of the Fund as a result of the changes to the index underlying the Fund. The proposed rule change was published for comment in the **Federal Register** on May 23, 2016.<sup>3</sup>

On June 27, 2016, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On August 12, 2016, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> On October 27, 2016, the Commission issued a notice of designation of a longer period for Commission action on proceedings to determine whether to approve or

disapprove the proposed rule change.<sup>7</sup> On January 4, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>8</sup> The Commission has received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

#### II. Exchange’s Description of the Proposal

The Exchange currently lists and trades Shares of the Fund<sup>9</sup> under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, which governs the listing and trading of Investment Company Units (“Units”) based on fixed income securities indexes.<sup>10</sup> The Fund is a series of the Trust. Invesco PowerShares Capital Management LLC is the investment adviser (“Adviser”) for the Fund. Invesco Distributors, Inc. is the Fund’s distributor. The Bank of New York Mellon is the administrator, custodian, and fund accounting and transfer agent for the Fund.

The Fund currently seeks investment results that generally correspond to the price and yield (before fees and expenses) of The Bank of America

<sup>7</sup> See Securities Exchange Act Release No. 79173, 81 FR 76400 (Nov. 2, 2016). The Commission designated January 18, 2017 as the date by which it should approve or disapprove the proposed rule change.

<sup>8</sup> In Amendment No. 1 to the proposed rule change, the Exchange: (a) Clarified that (i) in no event will the New Index (as defined herein) be composed of fewer than 500 issues, and (ii) FINRA (as defined herein) is able to access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares; (b) stated that that Adviser (as defined herein) represents that within a single municipal bond issuer, separate issues by the same issuer are likely to trade similarly to one another, and that individual CUSIPs within the New Index that share characteristics with other CUSIPs have a high yield to maturity correlation, and frequently have a correlation of one or close to one; and (c) made other technical edits and non-substantive corrections. Because Amendment No. 1 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment. Amendment No. 1, which amended and replaced the original filing in its entirety, is available on the Commission’s Web site at: <https://www.sec.gov/comments/sr-nysearca-2016-62/nysearca201662-1460311-130254.pdf>.

<sup>9</sup> The Exchange states that, on February 26, 2016, PowerShares Exchange-Traded Fund Trust II (“Trust”) filed a post-effective amendment on Form 485 under the Securities Act of 1933 (“Securities Act”) to its registration statement on Form N-1A under the Securities Act and the Investment Company Act of 1940 (“1940 Act”) (File Nos. 333-138490 and 811-21977) (“Registration Statement”). The Exchange states that the Trust has obtained certain exemptive relief under the 1940 Act (File No. 812-13335) (“Exemptive Order”).

<sup>10</sup> The Exchange states that the PowerShares Build America Bond Portfolio was initially listed on November 17, 2009 pursuant to the generic listing criteria of Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3).

(“BofA”) Merrill Lynch Build America Bond Index (“Build America Bond Index”). The Fund generally invests at least 80% of its total assets in taxable municipal securities eligible to participate in the Build America Bond program created under the American Recovery and Reinvestment Act of 2009 or other legislation providing for the issuance of taxable municipal securities on which the issuer receives federal support of the interest paid (“Build America Bonds”) and that comprise the Build America Bond Index. The Build America Bond Index is designed to track the performance of U.S. dollar-denominated investment grade taxable municipal debt publicly issued under the Build America Bond program by U.S. states and territories, and their political subdivisions, in the U.S. market. Qualifying securities must have a minimum amount outstanding of \$1 million, at least 18 months remaining term to final maturity at the time of issuance, at least one year remaining term to final maturity, a fixed coupon schedule, and an investment grade rating (based on an average of Moody’s Investors Services, Inc. (“Moody’s”), Standard & Poor’s, a division of The McGraw-Hill Company, Inc. (“S&P”), and Fitch Ratings, Inc. (“Fitch”).

The Trust has proposed to change the index underlying the Fund to the BofA Merrill Lynch US Taxable Municipal Securities Plus Index (“New Index”) and to change the name of the Fund to PowerShares Taxable Municipal Bond Portfolio. The Exchange represents that the New Index does not meet the generic listing criteria of NYSE Arca Equities Rule 5.2(j)(3). The Exchange submitted this proposed rule change to permit the continued listing of the Fund. The New Index meets all of the requirements of the generic listing criteria of NYSE Arca Equities Rule 5.2(j)(3), except for that set forth in Commentary .02(a)(2).<sup>11</sup> Specifically, as of February 4, 2016, approximately 60.51% of the New Index weight was composed of individual maturities of \$100 million or more (determined at the time of issuance).

#### A. Changes to the Index Underlying the Fund

According to the Exchange, the Fund currently has a non-fundamental policy to invest at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in Build America

<sup>11</sup> Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of \$100 million or more.

<sup>16</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. 77849 (May 17, 2016), 81 FR 32371 (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 78157, 81 FR 43327 (July 1, 2016).

<sup>6</sup> See Securities Exchange Act Release No. 78564, 81 FR 55247 (Aug. 18, 2016).

Bonds. Moreover, as stated in the Registration Statement, the Fund complies with that non-fundamental policy because it also is required generally to invest at least 80% of the value of its total assets in the Build America Bonds that comprise the Build America Bond Index, in accordance with the terms of the relief set forth in the Trust's Exemptive Order.

However, in response to a changing market environment that includes a reduction in the number of Build America Bonds, the Adviser has proposed that the Fund's underlying index be changed from one that is focused on Build America Bonds to one that is more broadly focused on taxable municipal debt in general, and which may include Build America Bonds. Changing the Fund's underlying index would require changing the non-fundamental policy set forth above. Accordingly, before the Fund can change its underlying index, the Registration Statement states that the Fund's board of trustees ("Board") must approve the underlying index change, and the Fund must provide shareholders with sixty days written notice of the change.

Thus, after this proposed rule change is approved, the Trust represents that it intends to seek to obtain Board approval and provide the requisite shareholder notice. Subject to that Board approval and shareholder notice, the Fund intends to change its underlying index to one that is composed of taxable municipal securities, including both Build America Bonds and non-Build America Bonds. Following such change, the proposed underlying index for the Fund will be the New Index.

According to the Exchange, the change in the Fund's underlying index is designed to enable the Fund to expand its range of investments in light of a diminishing supply of Build America Bonds; otherwise, there is no other change to the Fund's investment strategies or objective. After such change, the Fund's investment objective will be to seek investment results that generally correspond (before fees and expenses) to the price and yield of the New Index. The Fund's new non-fundamental investment policy will be to invest at least 80% of its net assets (plus borrowings for investment purposes) in taxable municipal securities. In addition, the Fund generally will invest at least 80% of its total assets in the securities that will compose the New Index, in accordance with the terms of the Trust's Exemptive Order. However, the Fund may invest up to 20% of its total assets in securities not included in the New Index, money

market instruments, including repurchase agreements or other funds that invest exclusively in money market instruments (subject to applicable limitations under the 1940 Act or exemptions therefrom), convertible securities and structured notes (notes on which the amount of principal repayment and interest payments is based on the movement of one or more specified factors, such as the movement of a particular security or securities index), all to the extent that the Adviser believes investment in such instruments will facilitate the Fund's ability to achieve its new investment objective. In addition, the Fund intends to change its name to "PowerShares Taxable Municipal Bond Portfolio."<sup>12</sup>

#### B. Description of the New Index<sup>13</sup>

The New Index tracks the performance of U.S. dollar denominated taxable municipal debt publicly issued by U.S. states and territories, and their political subdivisions, in the U.S. domestic market. Qualifying securities must be subject to U.S. federal taxes and must have at least 18 months to maturity at point of issuance, at least one year remaining term to final maturity, a fixed coupon schedule (including zero coupon bonds), and an investment grade rating (based on an average of Moody's, S&P, and Fitch). The call date on which a pre-refunded bond will be redeemed is used for purposes of determining qualification with respect to final maturity requirements. For Build America Bonds to qualify for inclusion, the securities must have a minimum amount outstanding of \$1 million and be only "direct pay" (*i.e.*, a direct federal subsidy is paid to the issuer); "tax-credit" (*i.e.*, where the investor receives a tax credit on the interest payments) Build America Bonds are excluded. For all other securities, minimum size requirements vary based on the initial

<sup>12</sup> The Exchange represents that the changes described herein with respect to use of the New Index will be effective upon: (1) Approval by the Trust's Board; (2) shareholders' receipt of sixty days written notice of the proposed change; and (3) completing a filing with the Commission of another amendment to the Trust's Registration Statement, or a prospectus supplement reflecting these changes. According to the Exchange, the Adviser has managed and will continue to manage the Fund in the manner described in the Registration Statement and will not implement the changes described herein until this proposed rule change is operative.

<sup>13</sup> The Exchange states that the description of the New Index is based on information provided by BofA Merrill Lynch, which is the "Index Provider" with respect to the Underlying Index and the New Index. 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 New Index.

term to final maturity at time of issuance. Securities with an initial term to final maturity greater than or equal to one year and less than five years must have a current amount outstanding of at least \$10 million. Securities with an initial term to final maturity greater than or equal to five years and less than ten years must have a current amount outstanding of at least \$15 million. Securities with an initial term to final maturity of ten years or more must have a current amount outstanding of at least \$25 million. Local bonds issued by U.S. territories within their jurisdictions that are tax exempt within the U.S. territory but not elsewhere are excluded from the New Index. All Rule 144A securities, both with and without registration rights, and securities in legal default are excluded from the New Index. New Index constituents are capitalization-weighted based on their current amount outstanding times the market price plus accrued interest. Accrued interest is calculated assuming next-day settlement. Cash flows from bond payments that are received during the month are retained in the New Index until the end of the month and then are removed as part of the rebalancing. Cash does not earn any reinvestment income while it is held in the New Index.<sup>14</sup> The New Index is rebalanced on the last calendar day of the month, based on information available up to and including the third business day before the last business day of the month. No changes are made to constituent holdings other than on month end rebalancing dates.

As of February 4, 2016, approximately 84.39% of the weight of the New Index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of \$100 million or more for all maturities of the offering. In addition, as of February 4, 2016, the total dollar amount outstanding of issues in the New Index was approximately \$281,589,346,769, and the average dollar amount outstanding of issues in the New Index was approximately \$ 27,808,547. Further, the most heavily weighted component represents 2.27% of the weight of the New Index, and the five most heavily weighted components represent 6.33% of the weight of the New Index.<sup>15</sup> The

<sup>14</sup> Information concerning constituent bond prices, timing, and conventions is provided in the BofA Merrill Lynch Bond Index Guide, which can be accessed on Bloomberg.

<sup>15</sup> Commentary .02(a)(4) to NYSE Arca Equities Rule 5.2(j)(3) provides that no component fixed-income security (excluding Treasury Securities and

Exchange also states that the New Index is composed of approximately 10,126 issues and 1,811 unique issuers, and that in no event will the New Index be composed of fewer than 500 issues. According to the proposal, within a single municipal bond issuer, separate issues by the same issuer are likely to trade similarly to one another, and individual CUSIPs within the New Index that share characteristics with other CUSIPs have a high yield to maturity correlation, and frequently have a correlation of one or close to one. All components of the New Index have at least an investment grade composite rating of BBB3 or higher (based on an average of S&P, Moody's, and Fitch).

The Exchange represents that: (1) With respect to the New Index, except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares of the New Index 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 Fund; and (3) the Trust is required to comply with Rule 10A-3 under the Act<sup>16</sup> for the initial and continued listing of the Shares of the Fund. In addition, the Exchange represents that the Shares of the Fund 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 New Index and the applicable Intraday Indicative Value ("IIV"),<sup>17</sup> rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers, and the Information Bulletin to Equity Trading Permit Holders ("ETP Holders"), 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.<sup>18</sup>

GSE Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

<sup>16</sup> 17 CFR 240.10A-3.

<sup>17</sup> The IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session of 9:30 a.m. to 4:00 p.m., Eastern time. According to the Exchange, several major market data vendors display and/or make widely available IIVs taken from the Consolidated Tape Association ("CTA") or other data feeds.

<sup>18</sup> See, e.g., Securities Exchange Act Release Nos. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR-NYSEArca-2007-36) (order approving NYSE Arca generic listing standards for Units based on a fixed income index); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14) (order

### 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 proposal 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 also 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' 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. The current value of the New Index is widely disseminated by one or more major market data vendors at least once per day, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02(b)(ii). In addition, the IIV for the Shares of the Fund is disseminated by one or more major market data vendors and is 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). The components and percentage weightings of the New Index are available from major market data vendors, and the portfolio of securities held by the Fund is disclosed daily on the Fund's Web site. The Exchange also represents that information regarding market price and trading volume of the

approving generic listing standards for Units and Portfolio Depositary Receipts); 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-98-29) (order approving rules for listing and trading of Units).

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

<sup>20</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>21</sup> 17 U.S.C. 78f(b)(5).

<sup>22</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information will be available via the CTA high-speed line. Moreover, trade price and other information relating to municipal bonds are available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") system. The Web site for the Fund will include the prospectus for the Fund and additional data relating to net asset value ("NAV") and other applicable quantitative information.

The Commission 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. Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. 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. If the IIV and the New Index value are not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or New Index value occurs. If the interruption to the dissemination of the IIV or New Index value persists past the trading day in which it occurred, the Exchange will halt trading. Trading in Shares of the Fund 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 of the Fund may be halted.<sup>23</sup> The Exchange states that trade price and other information relating to municipal bonds is available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system.

Based on the Exchange's representations, the Commission believes that the New Index is

<sup>23</sup> 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.

sufficiently broad-based to deter potential manipulation. The Exchange represents that, as of February 4, 2016, approximately 84.39% of the weight of the New Index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of \$100 million or more for all maturities of the offering. In addition, as of February 4, 2016, the total dollar amount outstanding of issues in the New Index was approximately \$281,589,346,769, and the average dollar amount outstanding of issues in the Index was approximately \$ 27,808,547. Further, the most heavily weighted component represented 2.27% of the weight of the New Index, and the five most heavily weighted components represented 6.33% of the weight of the New Index.<sup>24</sup> The Exchange also represents that the New Index is composed of approximately 10,126 issues and 1,811 unique issuers, and that in no event will the New Index be composed of fewer than 500 issues.

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

(1) The Adviser has managed and will continue to manage the Fund in the manner described in the Registration Statement, and it will not implement the changes described herein until this proposed rule change is operative.

(2) 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 New Index.

(3) With respect to the New Index, except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares of Fund overlying the New Index would satisfy all of the current generic listing standards under NYSE Arca Equities Rule 5.2(j)(3).

(4) 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 Fund overlying the New Index.

(5) The Trust is required to comply with Rule 10A-3 under the Act<sup>25</sup> for the initial and continued listing of the Shares of the Fund overlying the New Index.

(6) The Shares of the Fund overlying the New Index 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 New Index and the applicable IIV,<sup>26</sup> rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers, and the Information Bulletin to ETP Holders, 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.<sup>27</sup>

(7) The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.<sup>28</sup> The Exchange represents 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 federal securities laws applicable to trading on the Exchange.

(8) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets that are members of the Intermarket Surveillance Group (“ISG”). In addition, the Exchange 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. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

The Exchange represents that all statements and representations made in this proposal regarding (a) the description of the Fund’s portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. The Adviser has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and,

pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.<sup>29</sup> If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m). This approval order is based on all of the Exchange’s representations, including those set forth above and in the Notice, as modified by Amendment No. 1 thereto, and the Exchange’s description of the Funds.

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>30</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>31</sup> that the proposed rule change (SR-NYSEArca-2016-62), 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>32</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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<sup>24</sup> See *supra* note 15.

<sup>25</sup> 17 CFR 240.10A-3.

<sup>26</sup> See *supra* note 17.

<sup>27</sup> See *supra* note 18 and accompanying text.

<sup>28</sup> The Exchange represents that FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

<sup>29</sup> The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will “surveil” for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 78005 (Jun. 7, 2016), 81 FR 38247 (Jun. 13, 2016) (SR-BATS-2015-100). In the context of this representation, it is the Commission’s view that “monitor” and “surveil” both mean ongoing oversight of a fund’s compliance with the continued listing requirements. Therefore, the Commission does not view “monitor” as a more or less stringent obligation than “surveil” with respect to the continued listing requirements.

<sup>30</sup> 15 U.S.C. 78f(b)(5).

<sup>31</sup> 15 U.S.C. 78s(b)(2).

<sup>32</sup> 17 CFR 200.30-3(a)(12).