

any person who, if it were not directly or indirectly controlled by the BDC, would not be directly or indirectly under the control of a person who controls the BDC), or any person who is, within the meaning of section 2(a)(3)(C) of the Act, an affiliated person of such person. Sections 2(a)(3)(C) defines an “affiliated person” of another person as any person directly or indirectly controlling, controlled by, or under common control with, such other person.

2. Rule 17d-1 under the Act generally prohibits participation by a registered investment company and an affiliated person (as defined in section 2(a)(3) of the Act) or principal underwriter for that investment company, or an affiliated person of such affiliated person or principal underwriter, in any “joint enterprise or other joint arrangement or profit-sharing plan,” as defined in the rule, without prior approval by the Commission by order upon application. Although the Commission has not adopted any rules expressly under section 57(a)(4), section 57(i) provides that the rules (but not section 17(d) itself) under section 17(d) applicable to registered closed-end investment companies (e.g., rule 17d-1) are, in the interim, deemed to apply to transactions subject to section 57(a).

3. As the investment adviser and principal underwriter to the Company, the Advisor and the Dealer Manager, respectively, are subject to the prohibitions of section 57(a)(4) as a result of section 57(b)(2) of the Act. Moreover, the Sponsor may be deemed to control both the Advisor and the Dealer Manager and the Advisor may be deemed to control the Company within the meaning of section 2(a)(9) of the Act.<sup>1</sup> Accordingly, the Company, the Advisor, the Dealer Manager and the Sponsor may be deemed to be affiliated persons of each other under section 2(a)(3)(C) of the Act because they are under common control of the Sponsor, and thus the Advisor, the Dealer Manager and the Sponsor would be persons described in section 57(b)(2) subject to the prohibitions of section 57(a)(4). The Distribution Fee Reimbursement and the Dealer-Manager Agreement Amendment (the “Proposed Transactions”) might be deemed a “joint enterprise or other joint arrangement,” within the meaning of section 57(a)(4) of the Act and rule 17d-1 thereunder. Therefore, the Sponsor, the Advisor, the Dealer Manager, and the Company may be prohibited from engaging in the Proposed Transactions as a result of the prohibitions of section 57(a)(4) and rule 17d-1, without a grant of the Order of the Commission.

4. In passing upon applications under rule 17d-1, the Commission considers whether the company’s participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

5. Applicants believe that the representations and conditions set forth in the application will ensure that the Proposed Transactions are consistent with the protection of the Company’s Shareholders, including the Current Common Shareholders (as herein defined), and with the purposes intended by the policies and provisions of the Act. Applicants state that the Company’s participation in the Proposed Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants.

#### Applicants’ Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Company will ensure that total Underwriting Compensation payable in the Offering will not exceed 10% of the gross proceeds of the Offering, consistent with Conduct Rule 2310.

2. For the period of time in which the Distribution Fee is payable, the Dealer Manager will waive any annual Distribution Fee payment to which it is otherwise entitled in an amount sufficient to ensure that the total return experienced by the holders of the Company’s Common Shares immediately prior to the implementation of the Dealer Manager Agreement Amendment (the “Current Common Shareholders”) is not less than the total return the Current Common Shareholders would have experienced if the Proposed Transactions had not occurred and the Dealer Manager Agreement had not been amended.

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

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

[FR Doc. 2016-10109 Filed 4-29-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### Order of Suspension of Trading; In the Matter of Pineapple Express, Inc.

April 28, 2016.

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of Pineapple Express, Inc. (CIK No. 1654672) because of recent, unusual and unexplained market activity in the company’s stock that raises concerns about the adequacy of publicly-available information regarding the company. Pineapple Express, Inc. is a Wyoming corporation with its principal place of business listed as Los Angeles, California, with stock quoted on OTC Link (previously “Pink Sheets”) operated by OTC Markets Group, Inc. under the ticker symbol PNPL.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, on April 28, 2016, through 11:59 p.m. EDT, on May 11, 2016.

By the Commission.

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

[FR Doc. 2016-10295 Filed 4-28-16; 4:15 pm]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77714; File No. SR-NASDAQ-2016-028]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of the Shares of the iSectors Post-MPT Growth ETF of ETFis Series Trust I

April 26, 2016.

#### I. Introduction

On February 23, 2016, The NASDAQ Stock Market LLC (“Exchange” or “Nasdaq”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”

or “Exchange Act”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the iSectors Post-MPT Growth ETF (“Fund”), a series of ETFs Series Trust I (“Trust”), under Nasdaq Rule 5735. The proposed rule change was published for comment in the **Federal Register** on March 11, 2016.<sup>3</sup> On April 14, 2016, (a) the Exchange filed Amendment No. 1 to the proposed rule change,<sup>4</sup> and (b) pursuant to Section 19(b)(2) of the Act,<sup>5</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>6</sup> The Commission 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 proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund will be an actively managed exchange-traded fund (“ETF”). The Shares will be offered by the Trust,<sup>7</sup> which is

registered with the Commission as an investment company and has filed a registration statement on Form N–1A (“Registration Statement”) with the Commission.<sup>8</sup> The Fund will be a series of the Trust.

Virtus ETF Advisers LLC will be the investment adviser (“Adviser”) to the Fund. iSectors, LLC will be the investment sub-adviser (“Sub-Adviser”) to the Fund. ETF Distributors LLC will be the principal underwriter and distributor of the Fund’s Shares. The Bank of New York Mellon will act as the administrator, accounting agent, custodian, and transfer agent to the Fund. The Exchange states that, while the Adviser and Sub-Adviser are not registered as broker-dealers,<sup>9</sup> the Adviser (but not the Sub-Adviser) is affiliated with a broker-dealer. The Exchange represents that the Adviser has implemented a fire wall with respect to that broker-dealer regarding access to information concerning the composition of, and changes to, the portfolio, and personnel who make decisions on the Fund’s portfolio composition will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio.<sup>10</sup>

The Exchange has made the following representations and statements in describing the Fund and its investment strategy, including the Fund’s portfolio holdings and investment restrictions.<sup>11</sup>

portfolio, the Trust’s application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933. *See Notice, supra* note 3, 81 FR at 12990.

<sup>8</sup> *See Notice, supra* note 3, 81 FR at 12990. *See* Registration Statement on Form N–1A for the Trust filed on December 2, 2015 (File Nos. 333–187668 and 811–22819).

<sup>9</sup> *See Notice, supra* note 3, 81 FR at 12990–12991.

<sup>10</sup> The Exchange further represents that, in the event (a) the Adviser or the Sub-Adviser registers as a broker dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition of, and changes to, the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio. *Id.*

<sup>11</sup> The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value (“NAV”), distributions, and taxes, among other things, can be found in the Notice and the Registration Statement, as applicable. *See Notice*

## A. Exchange’s Description of the Fund’s Principal Investments

The Fund’s investment objective will be to provide growth of capital, with a secondary emphasis on capital preservation, independent of individual market conditions. The Fund will seek to achieve its investment objective by utilizing a long-only, tactically-managed exposure to sectors of the U.S. equity market and U.S. fixed income markets. To obtain this exposure, the Sub-Adviser will invest, under normal market conditions,<sup>12</sup> the Fund’s assets in: (1) ETFs,<sup>13</sup> exchange-traded notes (“ETNs”),<sup>14</sup> and exchange-traded trusts that hold commodities (“ETTs”) (ETFs, ETNs, and ETTs, collectively, “ETPs”);<sup>15</sup> (2) individually selected U.S. exchange-traded common stocks (when the Sub-Adviser determines that investing in them would be more efficient or otherwise advantageous to do so); (3) money market funds; (4) U.S. treasuries;<sup>16</sup> or (5) money market

and Registration Statement, *supra* notes 3 and 8, respectively.

<sup>12</sup> The term “under normal market conditions” as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the equity and fixed income 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. *See Notice, supra* note 3, 81 FR at 12991.

<sup>13</sup> According to the Exchange, ETFs included in the Fund will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by other ETFs and their sponsors from the Commission. The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depositary Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). The shares of ETFs in which a Fund may invest will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (“ISG”), which includes all U.S. national securities exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. *See infra* note 15.

<sup>14</sup> The ETNs are limited to those described in Nasdaq Rule 5710.

<sup>15</sup> The Fund may invest in the following ETPs: Trust Certificates, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units, and Managed Trust Securities (each as described in Nasdaq Rule 5711); Paired Class Shares (as described in Nasdaq Rule 5713); Trust Issued Receipts (as described in Nasdaq Rule 5720); and Exchange-Traded Managed Fund Shares (as described in Nasdaq Rule 5745). *See Notice, supra* note 3, at 12991. The Fund may invest in leveraged ETPs (e.g., 2X or 3X), but will not invest in inverse or inverse leveraged ETPs (e.g., –1X or –2X). In addition, no more than 25% of the Fund’s holdings will be invested in leveraged ETPs. *See Amendment No. 1, supra* note 4.

<sup>16</sup> These securities will include securities that are issued or guaranteed by the U.S. Treasury, by

<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. 77301 (Mar. 7, 2016), 81 FR 978 (“Notice”).

<sup>4</sup> In Amendment No. 1, the Exchange clarified that: (a) all statements and representations made in the proposal regarding the description of the portfolio, limitations on portfolio holdings or reference assets, or the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange; (b) the issuer will advise the Exchange of any failure by the Fund to comply with the continued listing requirements; (c) pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements; (d) if the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series; (e) the Fund will not invest in inverse or inverse leveraged ETPs (as defined herein); and (f) no more than 25% of the Fund’s holdings will be invested in leveraged ETPs. Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change or raise novel regulatory issues, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 to the proposed rule change is available at: <http://www.sec.gov/comments/sr-nasdaq-2016-028/nasdaq2016028-1.pdf>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> *See* Securities Exchange Act Release No. 77623 (Apr. 14, 2016), 81 FR 23333 (Apr. 20, 2016).

<sup>7</sup> According to the Exchange, the Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the Investment Company Act of 1940 (“1940 Act”). The Exchange also states that, in compliance with Nasdaq Rule 5735(b)(5), which applies to Managed Fund Shares based on an international or global

instruments. To the extent that the Fund invests in ETPs or money market funds to gain domestic exposure, the Fund is considered, in part, a “fund of funds.”<sup>17</sup>

#### *B. Exchange’s Description of Other Investments for the Fund*

In order to seek its investment objective, the Fund will not employ other strategies outside of the above-described “Principal Investments.”<sup>18</sup>

#### *C. Exchange’s Description of the Fund’s Investment Restrictions*

According to the Exchange, under normal market conditions, the Fund anticipates investing its total assets in shares of ETPs, individually selected U.S. exchange-traded common stocks, money market funds, U.S. treasuries, or money market instruments.<sup>19</sup> The Fund will not purchase securities of open-end investment companies except in compliance with the 1940 Act. The Fund will not use derivative instruments, including options, swaps, forwards, and futures contracts.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities and other illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund’s net assets are held in illiquid securities or other illiquid assets. Illiquid securities and other illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined

in accordance with Commission staff guidance.

The Exchange states that the Fund intends to qualify for and to elect to be treated as a separate regulated investment company under Subchapter M of the Internal Revenue Code. In addition, under the 1940 Act, the Fund’s investment in investment companies will be limited to, subject to certain exceptions: (i) 3% Of the total outstanding voting stock of any one investment company; (ii) 5% of the Fund’s total assets with respect to any one investment company; and (iii) 10% of the Fund’s total assets with respect to investment companies in the aggregate.<sup>20</sup>

The Fund’s investments will be consistent with its investment objective. The Fund does not presently intend to engage in any form of borrowing for investment purposes, and it will not be operated as a “leveraged ETF,” *i.e.*, it will not be operated in a manner designed to seek a multiple of the performance of an underlying reference index.<sup>21</sup>

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

After careful review, the Commission finds that the Exchange’s proposal 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, as modified by Amendment No. 1 thereto, 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 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 also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,<sup>24</sup> which sets forth the finding of Congress 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 and any underlying ETPs will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares.<sup>25</sup> On each business day, before commencement of trading in Shares in the Regular Market Session<sup>26</sup> on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (“Disclosed Portfolio,” as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund’s calculation of NAV at the end of the business day.<sup>27</sup> In addition, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service<sup>28</sup> will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session.<sup>29</sup> The Fund’s NAV will be determined as of the close of trading on the New York Stock Exchange (ordinarily 4:00 p.m. E.T.) on each day that the New York Stock Exchange is

<sup>25</sup> See Notice, *supra* note 3, 81 FR at 12993.

<sup>26</sup> See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4:00 a.m. to 9:30 a.m. E.T.; (2) Regular Market Session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4:00 p.m. or 4:15 p.m. to 8:00 p.m. E.T.).

<sup>27</sup> Under accounting procedures to be followed by the Fund, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on that business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day. See Notice, *supra* note 3, 81 FR at 12993. The daily disclosure will include for each portfolio security and other asset of the Fund the following information on the Fund’s Web site (if applicable): Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holdings in the Fund’s portfolio. The Web site information will be publicly available at no charge. See *id.*

<sup>28</sup> Currently, the Nasdaq Global Index Data Service (“GIDS”) is the Nasdaq global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. The Exchange represents that GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs. See *id.*

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

various agencies of the U.S. government, or by various instrumentalities, which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the “full faith and credit” of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government-sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government. See Notice, *supra* note 3, 81 FR at 12991.

<sup>17</sup> See *id.*

<sup>18</sup> See *id.*

<sup>19</sup> According to the Exchange, for temporary defensive purposes, during the initial invest-up period, and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies. For example, it may hold a higher than normal proportion of its assets in cash. During these periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

<sup>20</sup> See Notice, *supra* note 3, 81 FR at 12991.

<sup>21</sup> *Id.* at 12991–12992.

<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).

open.<sup>30</sup> The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.<sup>31</sup> Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.<sup>32</sup> Price information regarding the ETPs, equity securities, U.S. treasuries, money market instruments, and money market funds held by the Fund will be available through the U.S. exchanges trading these assets, in the case of exchange-traded securities, as well as automated quotation systems, or published or other public sources. Intra-day price information for all assets held by the Fund will also be available through subscription services, such as Bloomberg, Markit, and Thomson Reuters, which can be accessed by authorized participants and other investors.

The Commission also 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. The Exchange states that it will obtain a

representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.<sup>33</sup> Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). In addition, 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> Trading in the Shares also will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth additional circumstances under which Shares of the Fund may be halted.<sup>35</sup> The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.<sup>36</sup> In addition, the Exchange states that, while the Adviser and Sub-Adviser are not registered as broker-dealers, the Adviser (but not the Sub-Adviser) is affiliated with a broker-dealer and has implemented a fire wall with respect to that broker-dealer regarding access to information concerning the composition of, and changes to, the portfolio.<sup>37</sup> Further, the

<sup>33</sup> See *id.* at 12994.

<sup>34</sup> The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. These may include: (1) The extent to which trading is not occurring in the securities and other assets constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. See *id.*

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

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

<sup>37</sup> See *id.* at 12990; see also *supra* note 10 and accompanying text. The Exchange further represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser, the Sub-Adviser, and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted

Commission notes that the Reporting Authority<sup>38</sup> that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.<sup>39</sup> The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>40</sup>

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has represented that:

(1) The Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) Nasdaq's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to detect and help deter violations of Exchange rules and applicable federal securities laws.

(3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and other exchange-traded securities and instruments, including the common stock and shares held by the Fund with other markets and other entities that are members of the ISG,<sup>41</sup> and FINRA may obtain trading information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from those markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG,<sup>42</sup> or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed-income securities held by the Fund

under subparagraph (i) above. See Notice, *supra* note 3, 81 FR at 12990-12991.

<sup>38</sup> Nasdaq Rule 5730(c)(4) defines "Reporting Authority."

<sup>39</sup> See Nasdaq Rule 5735(d)(2)(B)(ii).

<sup>40</sup> According to the Exchange, FINRA surveils trading on the Exchange pursuant to a regulatory services agreement, and the Exchange is responsible for FINRA's performance under this regulatory services agreement. See Notice, *supra* note 3, 81 FR at 12994.

<sup>41</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

<sup>42</sup> *Id.*

<sup>30</sup> According to the Exchange, the Fund's investments will be valued at market value (*i.e.*, the price at which a security is trading and could presumably be purchased or sold) or, in the absence of market value with respect to any investment, at fair value in accordance with valuation procedures adopted by the Trust's Board ("Board") and in accordance with the 1940 Act. Common stocks and equity securities (including shares of ETPs) will be valued at the last sales price on that exchange. Portfolio securities traded on more than one securities exchange will be valued at the last sale price or, if so disseminated by an exchange, the official closing price, as applicable, at the close of the exchange representing the principal exchange or market for these securities on the business day as of which the value is being determined. U.S. treasuries are valued using quoted market prices, and money market funds are valued at the net asset value reported by the funds. Money market instruments will typically be valued using information provided by a third-party pricing service. For all security types in which the Fund may invest, the Fund's primary pricing source is Interactive Data Corp.; its secondary source is Reuters; and its tertiary source is Bloomberg. Certain securities may not be able to be priced by pre-established pricing methods. These securities may be valued by the Board or its delegate at fair value. The use of fair value pricing by the Fund will be governed by valuation procedures adopted by the Board and in accordance with the provisions of the 1940 Act. All valuations will be subject to review by the Board or its delegate. See *id.* at 12992.

<sup>31</sup> See *id.* at 12993.

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

reported to FINRA's Trade Reporting and Compliance Engine.

(4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(5) Prior to commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value and Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Act.<sup>43</sup>

(7) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets.

(8) The Fund may invest in leveraged ETPs (e.g., 2X or 3X), but will not invest in inverse or inverse leveraged ETPs (e.g., -1X or -2X). In addition, no more than 25% of the Fund's holdings will be invested in leveraged ETPs.

(9) The Fund will not use derivative instruments, including options, swaps, forwards, and futures contracts.

(10) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the exchange.

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the 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. In addition, the issuer 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>44</sup> If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

This approval order is based on all of the Exchange's representations, including those set forth above, in the Notice, and in Amendment No. 1 to the proposed rule change. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735, including those set forth in this proposed rule change, as modified by Amendment No. 1 thereto, to be listed and traded on the Exchange on an initial and continuing basis.

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>45</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 Exchange Act,<sup>46</sup> that the proposed rule change (SR-NASDAQ-2016-028), 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>47</sup>

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

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<sup>44</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. 77499 (April 1, 2016), 81 FR 20428 (April 7, 2016) (SR-BATS-2016-04) (approving a proposed rule change to list and trade shares of the SPDR DoubleLine Short Duration Total Return Tactical ETF), available at: <http://www.sec.gov/rules/sro/bats/2016/34-77499.pdf>. In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of the 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>45</sup> 15 U.S.C. 78f(b)(5).

<sup>46</sup> 15 U.S.C. 78s(b)(2).

<sup>47</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77715; File No. SR-NASDAQ-2016-056]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the PowerShares Variable Rate Investment Grade Portfolio, a Series of the PowerShares Actively Managed Exchange-Traded Fund Trust

April 26, 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 April 13 2016, The NASDAQ Stock Market LLC ("Nasdaq" or the "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 Nasdaq. 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

Nasdaq proposes to list and trade the common shares of beneficial interest of the PowerShares Variable Rate Investment Grade Portfolio (the "Fund"), a series of the PowerShares Actively Managed Exchange-Traded Fund Trust (the "Trust"), under Nasdaq Rule 5735 ("Rule 5735"). The common shares of beneficial interest of the Fund are referred to herein as the "Shares."

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at Nasdaq's principal office, 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, 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 IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

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

<sup>43</sup> See 17 CFR 240.10A-3.