

The Exchange believes that difference between the proposed Rule 98 definition of “customer-driven order” and the Rule 5320 definition of “facilitated order” is not material because, if a “customer-driven order” under Rule 98 is not executed on a riskless principal basis, it would still be subject to the requirements of Rule 5320 and would not be eligible for the riskless principal exception.

The Exchange further believes that providing DMMs with the choice of whether to designate customer-driven orders as DMM interest would permit member organizations operating DMM units to facilitate customer-based order flow at the Exchange without such orders being restricted by DMM obligations, which may be contrary to customer instructions or best execution obligations. The Exchange further believes that the proposed rule change would apply DMM rules fairly because customer-driven orders not designated as DMM interest, would not be subject to the obligations, nor be eligible for the benefits, applicable to DMM interest.

Finally, the Exchange believes there is good cause to accelerate effectiveness of this proposed rule change because it would promote competition on the Exchange. As has been previously announced, additional member organizations are seeking to become approved as DMMs.<sup>21</sup> The proposed rule change would facilitate the transition of DMM responsibilities to new entrants that engage in customer-facing market making, thereby promoting competition among member organizations seeking to be approved as a DMM on the Exchange.

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

*A. by order approve or disapprove such proposed rule change, or*

*B. institute proceedings to determine whether the proposed rule change should be disapproved.*

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–NYSE–2016–16 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR–NYSE–2016–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–16 and should be submitted on or before April 5, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77333; File No. SR–BATS–2016–02]

**Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change to Rule 14.11(i), Managed Fund Shares, To List and Trade Shares of the iShares iBonds Dec 2023 AMT-Free Muni Bond ETF, iShares iBonds Dec 2024 AMT-Free Muni Bond ETF, iShares iBonds Dec 2025 AMT-Free Muni Bond ETF, and iShares iBonds Dec 2026 AMT-Free Muni Bond ETF of the iShares U.S. ETF Trust**

March 9, 2016.

On January 12, 2016, BATS Exchange, Inc. (“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 list and trade shares of the iShares iBonds Dec 2023 AMT-Free Muni Bond ETF, iShares iBonds Dec 2024 AMT-Free Muni Bond ETF, iShares iBonds Dec 2025 AMT-Free Muni Bond ETF, and iShares iBonds Dec 2026 AMT-Free Muni Bond ETF of the iShares U.S. ETF Trust under BATS Rule 14.11(i). The proposed rule change was published for comment in the **Federal Register** on January 27, 2016.<sup>3</sup> The Commission has not received any comments on the proposal.

Section 19(b)(2) of the Act <sup>4</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the

<sup>21</sup> See “Citadel Securities to become #1 Designated Market Maker on NYSE,” available at <http://www.citadelsecurities.com/news/citadel-securities-become-1-designated-market-maker-nyse/>; and “GTS to become Designated Market Maker on the New York Stock Exchange,” available at <http://gtsx.com/in-the-news/details/gts-to-become-designated-market-maker-on-the-new-york-stock-exchange>.

<sup>22</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. 76954 (Jan. 21, 2016), 81 FR 4695.

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

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 Racquel 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).