

MEMO# 22312

March 10, 2008

NYSE Arca Proposal to List and Trade Actively Managed ETFs

[22312]

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TO: ETF ADVISORY COMMITTEE No. 3-08
EQUITY MARKETS ADVISORY COMMITTEE No. 12-08 RE: NYSE ARCA PROPOSAL TO LIST
AND TRADE ACTIVELY MANAGED ETFS

NYSE Arca has filed a proposed rule change with the Securities and Exchange Commission relating to the listing and trading of managed fund shares, or actively managed ETFs. [\[1\]](#)

Specifically, the proposal sets forth the rules by which actively managed ETFs would list and trade, or trade pursuant to unlisted trading privileges, on the Exchange. The proposal would require that each series of actively managed ETFs satisfy the following continued listing criteria: (1) the Portfolio Indicative Value [\[2\]](#) is widely disseminated by one or more major market data vendors at least every 15 seconds; (2) the Disclosed Portfolio [\[3\]](#) is disseminated at least once daily and will be made available to all market participants at the same time; and (3) the Reporting Authority [\[4\]](#) 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. It also would amend NYSE Arca rules to incorporate references to actively managed ETFs into the rules governing trading sessions, trading halts, and listing fees.

The proposal would establish a minimum price variation for quoting and entry of orders at \$0.01, and would require the Exchange to develop written surveillance procedures. The proposal details some of the structural similarities between actively managed and index ETFs, noting that both require relief from certain provisions of the Investment Company Act

of 1940. The proposal also notes some of the differences, such as the ability for an actively managed ETF to pursue a method of “in kind” redemption using a Portfolio Deposit [5] consisting of securities that do not reflect the composition of the fund, but instead include investments in other securities including, for example, specified index ETFs.

The proposal states that NYSE Arca would file separate proposals with the SEC before listing and/or trading any actively managed ETFs. Following this requirement, according to the proposal, the Exchange also proposes to permit the listing and trading of shares of several PowerShares funds.

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endnotes

[1] See SEC Release No. 57395 (February 28, 2008), 73 FR 11974 (March 5, 2008). The proposal is available at <http://www.sec.gov/rules/sro/nysearca/2008/34-57395.pdf>. Comments are due on March 26, 2008.

[2] The Portfolio Indicative Value is the estimated indicative value of an actively managed ETF based on current information regarding the value of the securities and other assets in the Disclosed Portfolio.

[3] The Disclosed Portfolio is the identity and quantity of the securities and other assets held by the underlying investment company that will form the basis for the investment company's calculation of the NAV at the end of the business day.

[4] The Reporting Authority is the Exchange, an institution, or a reporting service designated by the Exchange (or by the exchange that lists a particular series of the actively managed ETF) as the official source for calculating and reporting information relating to such series, including the Portfolio Indicative Value, the Disclosed Portfolio, and the NAV.

[5] The Portfolio Deposit generally consists of a basket of securities that reflects the composition of an index ETF's portfolio. It often includes a small cash component to make the value of the deposit or basket exactly equal to the aggregate NAV.

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