

Shares pursuant to UTP. Under this rule, if the listing market halts trading when the IIV is not being calculated or widely disseminated, CBOE also would halt trading in the Shares. This rule is substantially similar to those recently adopted by other exchanges and found by the Commission to be consistent with the Act.<sup>15</sup>

The Commission notes that, if the Shares should be delisted by the listing market, the Exchange would no longer have authority to trade the Shares pursuant to this order.

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

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares and to deter and detect violations of Exchange rules.

2. Prior to the commencement of trading, the Exchange would inform its members and member organizations in an Information Circular of the special characteristics and risks associated with trading the Shares.

3. The Information Circular would include the requirement that members and member firms deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found the listing and trading of the Shares on Amex and NYSE to be consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-CBOE-2007-49) be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**J. Lynn Taylor,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55741; File No. SR-CME-2007-01]

### Self-Regulatory Organization; Chicago Mercantile Exchange; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Listing Standards for Security Futures Products

May 10, 2007.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on April 19, 2007, Chicago Mercantile Exchange ("CME" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CME also has certified the proposed rule change with the Commodity Futures Trading Commission ("CFTC") under Section 5c(c) of the Commodity Exchange Act ("CEA")<sup>3</sup> on April 19, 2006.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to enact a technical amendment with respect to the identification of the subject of a contract. Specifically, futures on Nasdaq-100 Tracking Stock<sup>SM</sup> ("QQQQ") shall henceforth be known as PowerShares QQQ<sup>TM</sup> ("QQQQ"). The name change is occasioned by the fact that PowerShares Capital Management LLC assumed sponsorship of the NASDAQ-100 Trust, which tracks the NASDAQ-100 Index<sup>®</sup> commencing April 12, 2007. Note further that the CUSIP number associated with the ETF is amended to "73935A 104."

### 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 Exchange 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 these 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 aspects or 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 enact a technical amendment with respect to the identification of the subject of a contract. Specifically, futures on Nasdaq-100 Tracking Stock<sup>SM</sup> ("QQQQ") shall henceforth be known as PowerShares QQQ<sup>TM</sup> ("QQQQ"). The name change is occasioned by the fact that PowerShares Capital Management LLC assumed sponsorship of the NASDAQ-100 Trust, which tracks the NASDAQ-100 Index<sup>®</sup> commencing April 12, 2007. Note further that the CUSIP number associated with the ETF is amended to "73935A 104."

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act<sup>4</sup> and, in particular, furthers the objectives of Section 6(b)(5)<sup>5</sup> of the Act insofar as it is designed to prevent fraudulent and manipulative acts and to promote just and equitable principles of trade. The Exchange further believes that the proposed rule change is consistent with Section 6(h)(3)<sup>6</sup> of the Act which contains detailed requirements for listing standards and conditions for trading applicable to security futures products. The information below is offered in support of these statements.

Section 6(h)(3) of the Act<sup>7</sup> contains detailed requirements for listing standards and conditions for trading applicable to security futures products. Set forth below is a summary of each such requirement or condition, followed by a brief explanation of how CME will comply with it, whether by particular

<sup>15</sup> See, e.g., NYSE Arca Equities Rule 7.34; Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

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

<sup>15</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

<sup>3</sup> 7 U.S.C. 7a-2(c).

<sup>4</sup> 15 U.S.C. 78f.

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

<sup>6</sup> 15 U.S.C. 78f(h)(3).

<sup>7</sup> 15 U.S.C. 78f(h)(3).

provisions in the CME Listing Standards or otherwise.

Clause (A) of Section 6(h)(3)<sup>8</sup> requires that any security underlying a security future be registered pursuant to Section 12 of the Act.<sup>9</sup> This requirement is addressed by CME Rules 70001.2, 70002.1.a., 70003.2.b., and 70004.2.a.

Clause (B) of Section 6(h)(3)<sup>10</sup> requires that a market on which a physically settled security futures product is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the security futures product. CME has reached an agreement with a member of DTC, a registered clearing agency, to facilitate the delivery-versus-payment transactions which result from an agreement to make or take delivery of the underlying security by the market participant. This DTC member will provide CME with a dedicated DTC account. This account will be a sub-account of the DTC member's main account and will be utilized solely for CME activity with respect to the delivery of, and payment for, securities delivered against CME security futures products. CME will act as a contra party to each delivery transaction. CME's Clearing House will submit delivery instructions to DTC through the DTC member. Market participants will be required to provide proof to CME outlining their operational and legal ability to make or take delivery of the underlying. These agreements and relevant procedures will be fully operational prior to any possible delivery event associated with such security futures products.

Clause (C) of Section 6(h)(3)<sup>11</sup> provides that listing standards for security futures products must be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to Section 15A(a) of the Act.<sup>12</sup> For the reasons discussed above, notwithstanding specified differences between the Sample Listing Standards and the CME Listing Standards, CME believes that the latter are no less restrictive than comparable listing standards for exchange-traded options.

Clause (D) of Section 6(h)(3)<sup>13</sup> requires that each security future be based on common stock or such other equity securities as the Commission and

the CFTC jointly determine are appropriate. This requirement is addressed by Rules 70001.1, 70002.1, 70003.2, and 70004.2.

Clause (E) of Section 6(h)(3)<sup>14</sup> requires that each security futures product be cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on one market and offset on another market that trades such product. CME intends to clear security futures products traded through Exchange facilities through the CME Clearing House Division. The Clearing House Division will have in place all provisions for linked and coordinated clearing as mandated by law and statute as of the effective date of such laws and statutes. CME will facilitate deliveries with a registered clearing agency to facilitate the payment and delivery of securities underlying security futures products, through the facilities of a third party agent.

Clause (F) of Section 6(h)(3)<sup>15</sup> requires that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act<sup>16</sup> effect transactions in a security futures product.

CME clearing members, and their correspondents, are bound by the applicable sales practice rules of the National Futures Association ("NFA"), which is a national securities association. As such, the sales practice rules of NFA are, perforce, comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act.<sup>17</sup> The application of NFA sales practice rules is extended beyond the CME clearing membership to the extent that NFA By-Law 1101 provides that "[n]o member may carry an account, accept an order or handle a transaction in commodity futures contracts for or on behalf of any non-Member of NFA."

Clause (G) of Section 6(h)(3)<sup>18</sup> requires that each security futures product be subject to the prohibition against dual trading in Section 4j of the CEA<sup>19</sup> and the rules and regulations thereunder or the provisions of Section 11(a) of the Act<sup>20</sup> and the rules and regulations thereunder. Exchange Rule

123 requires Exchange members to comply with all applicable "provisions of the Commodity Exchange Act and regulations duly issued pursuant thereto by the CFTC."

Note that the prohibition of dual trading in security futures products per Regulation § 41.27<sup>21</sup> adopted pursuant to Section 4j(a) of the CEA,<sup>22</sup> generally, applies to a contract market operating an electronic trading system if such market provides floor brokers executing customer orders through open outcry a contemporaneous placement of orders on behalf of specified accounts on an electronic trading platform and a time or place advantage or the ability to override a predetermined matching algorithm. The Exchange offers security futures products exclusively on its CME Globex electronic trading platform. Thus, the conditions cited above are inapplicable in this context and the CME Rulebook contains no specific rule relating to dual trading in an electronic forum.

Clause (H) of Section 6(h)(3)<sup>23</sup> provides that trading in a security futures product must not be readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities. CME Listing Standards are designed to ensure that CME products and the underlying securities will not be readily susceptible to price manipulation. Exchange Rule 432 defines activity "to manipulate prices or to attempt to manipulate prices" as a "major offense," punishable, per Exchange Rule 430, by "expulsion, suspension, and/or a fine of not more than \$1,000,000 plus the monetary value of any benefit received as a result of the violative action."

Clause (I) of Section 6(h)(3)<sup>24</sup> requires that procedures be in place for coordinated surveillance amongst the market on which a security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading.

The Exchange has surveillance procedures in place to detect manipulation on a coordinated basis with other markets. In particular, CME is an affiliate member of the Intermarket Surveillance Group ("ISG") and is party

<sup>8</sup> 15 U.S.C. 78f(h)(3)(A).

<sup>9</sup> 15 U.S.C. 78l.

<sup>10</sup> 15 U.S.C. 78f(h)(3)(B).

<sup>11</sup> 15 U.S.C. 78f(h)(3)(C).

<sup>12</sup> 15 U.S.C. 78o-3(a).

<sup>13</sup> 15 U.S.C. 78f(h)(3)(D).

<sup>14</sup> 15 U.S.C. 78f(h)(3)(E).

<sup>15</sup> 15 U.S.C. 78f(h)(3)(F).

<sup>16</sup> 15 U.S.C. 78o-3(a).

<sup>17</sup> 15 U.S.C. 78o-3(a).

<sup>18</sup> 15 U.S.C. 78f(h)(3)(G).

<sup>19</sup> 7 U.S.C. 6j.

<sup>20</sup> 15 U.S.C. 78k(a).

<sup>21</sup> 17 CFR 41.27.

<sup>22</sup> 7 U.S.C. 6j(a).

<sup>23</sup> 15 U.S.C. 78f(h)(3)(H).

<sup>24</sup> 15 U.S.C. 78f(h)(3)(I).

to an affiliate agreement and an agreement to share market surveillance and regulatory information with the other ISG members. Further, CME is party to a supplemental agreement with the other ISG members to address the concerns expressed by the Commission with respect to affiliate ISG membership.<sup>25</sup>

Note that CME Rule 424, as shown in the Appendix below, permits CME to enter into agreements for the exchange of information and other forms of mutual assistance with domestic or foreign self-regulatory organizations, associations, boards of trade and their respective regulators.

Clause (J) of Section 6(h)(3)<sup>26</sup> requires that a market on which a security futures product is traded have in place audit trails necessary or appropriate to facilitate the coordinated surveillance referred to in the preceding paragraph.

The Exchange relies upon its Market Regulation Department and its large, highly trained staff to actively monitor market participants and their trading practices; and to enforce compliance with Exchange Rules. Market Regulation Department staff is organized into the Compliance and the Market Surveillance Groups. In performing its functions the Market Regulation Department routinely works closely with the Audit Department, the Clearing House, the Legal Department, the Globex Control Center, and the Information Technology Department.

The Compliance area is responsible for enforcing the trading practice rules of the Exchange through detection, investigation, and prosecution of those who may attempt to violate those rules. Further, the area is responsible for handling customer complaints, ensuring the integrity of the Exchange's audit trail and administering an arbitration program for the resolution of disputes. The area employs investigators, attorneys, trading floor investigators, data analysts and a computer programming and regulatory systems design staff.

The Market Regulation Department has created some of the most sophisticated tools in the world to assist with the detection of possible rule violations and monitoring of the market. Among the systems it uses are The Regulatory Trade Browser ("RTB"), the Virtual Detection System ("VDS"), The Reportable Position System ("RPS"), and the RegWeb Profile System ("RegWeb"). These systems include information on all Globex users, all

transactions, large positions, and statistical information on trading entities.

The Market Surveillance area is dedicated to the detection and prevention of market manipulation and other similar forms of market disruption. As part of these responsibilities, the group enforces the Exchange's position limit rules, administers the hedge approval process and maintains the Exchange's RPS system.

The foundation of the Exchange's Market Surveillance program is the deep knowledge of its staff about the major users, brokers, and clearing firms, along with its relationship with other regulators. Day-to-day monitoring of market positions is handled by a dedicated group of surveillance analysts assigned to specific market(s). Each analyst develops in-depth expertise of the factors that influence the market in question. The Exchange estimates that perhaps 90% of the market users at any single time are known to the Exchange. Daily surveillance staff activities include:

- Monitoring positions for size based on percentage of open interest and historic user participation in each contract.
- Aggregation of positions across clearing members, with the use of CME trade reporting systems, to account for all positions held by any single participant. This daily review permits the surveillance analyst promptly to identify unusual market activity.
- As a contract approaches maturity, large positions are scrutinized to determine whether such activity is consistent with prior experience, allowing prompt regulatory intervention if necessary.
- Analysts closely monitor market news through on-line and print media.
- Staff conducts on-site visits to large market participants periodically.

Market Regulation staff investigates possible misconduct and, when appropriate, initiates disciplinary action. Exchange Rule 430 empowers the Exchange's disciplinary committees to discipline, limit, suspend, or terminate a member's activities for cause, amongst other sanctions. Note further that the Exchange requires, per Rule 123, that members shall be responsible for "the filing of reports, maintenance of books and records, and permitting inspection and visitation" in order to facilitate such investigations by Exchange staff.

CME Rule 536 requires that certain information be recorded with respect to each order which includes: time entered, terms of the order, order type,

instrument and contract month, price, quantity, account type, account designation, user code, and clearing firm. This information may be recorded manually on timestamped order tickets, electronically in a clearing firms system, or by entering the orders with the required information into Globex immediately upon receipt. A complete Globex electronic audit trail is archived and maintained by CME for at least a five year period. Clearing firms must also maintain any written or electronic order records for a period of five years.

Clause (K) of Section 6(h)(3)<sup>27</sup> requires that a market on which a security futures product is traded have in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded.

The Exchange filed with the Commission, pursuant to Rule 19b-7 under the Act,<sup>28</sup> rules establishing a generalized framework for the trade of security futures products.<sup>29</sup> Specifically, these rules establish a framework for the trade of Physically Delivered Single Security Futures.

In particular, Rule 71001.F. provides, in accordance with Regulation § 41.25(a)(2) of CEA,<sup>30</sup> that "[t]rading of Physically Delivered Single Security Futures shall be halted at all times that a regulatory halt, as defined per SEC Rule 6h-1(a)(3) and CFTC Regulation § 41.1(l), has been instituted for the underlying security."

Clause (L) of Section 6(h)(3)<sup>31</sup> requires that the margin requirements for a security futures product comply with the regulations prescribed pursuant to Section 7(c)(2)(B) of the Act.<sup>32</sup> CME submitted margin requirement rules<sup>33</sup> to the Commission per Rule 19b-4 under the Act.<sup>34</sup> Thus, CME believes that its rules regarding customer margin are consistent with the requirements of the Act.

For the reasons described above, CME believes that the rules submitted herewith, satisfy the requirements set forth in Section 6(h)(3) of the Act.<sup>35</sup>

<sup>27</sup> 15 U.S.C. 78f(h)(3)(K).

<sup>28</sup> 17 CFR 240.19b-7.

<sup>29</sup> See Securities Exchange Act Release No. 51957 (June 30, 2005), 70 FR 39820 (July 11, 2005) (SR-CME-2005-03).

<sup>30</sup> 17 CFR 41.25(a)(2).

<sup>31</sup> 15 U.S.C. 78f(h)(3)(L).

<sup>32</sup> 15 U.S.C. 78g(c)(2)(B).

<sup>33</sup> See Securities Exchange Act Release No. 46637 (October 10, 2002), 67 FR 64672 (October 21, 2002) (SR-CME-2002-01).

<sup>34</sup> 17 CFR 240.19b-4.

<sup>35</sup> 15 U.S.C. 78f(h)(3).

<sup>25</sup> See Securities Exchange Act Release No. 45956 (May 17, 2002), 67 FR 36740 (May 24, 2002).

<sup>26</sup> 15 U.S.C. 78f(h)(3)(J).

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

CME does not believe that this amendment will have an impact on competition, because it represents a technical change in reference to the security underlying the futures contract.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments on the proposed rule change have not been solicited.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has become effective pursuant to Section 19(b)(7) of the Act.<sup>36</sup> Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.<sup>37</sup>

### **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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-CME-2007-01 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File No. SR-CME-2007-01. This file number should be included on the subject line if e-mail 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 inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of CME. 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 No. SR-CME-2007-01 and should be submitted on or before June 7, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>38</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-55751; File No. SR-ISE-2007-29]**

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Conforming Certain Rules With Comparable NASD Rules**

May 11, 2007.

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 May 1, 2007, the International Securities Exchange, LLC ("ISE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the ISE. On May 8, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>38</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.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend certain ISE rules to conform them to the rules of the National Association of Securities Dealers, Inc. ("NASD") for purposes of the Plan for the Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2<sup>3</sup> under the Act entered into between the parties ("17d-2 Agreement").<sup>4</sup> The text of the proposed rule change is available on the Exchange's Web site (<http://www.iseoptions.com>), at 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 Exchange 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 these 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 aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The Exchange proposes to amend certain ISE rules to conform them to the rules of the NASD for purposes of the 17d-2 Agreement between the parties and the related certification by the Exchange which states that the requirements contained in certain ISE rules are identical to, or substantially similar to, certain NASD rules that have been identified as comparable.<sup>5</sup> Specifically, the Exchange proposes to amend Rules 604, 624, 626, and 1407.

The Exchange proposes to amend ISE Rule 604, "Continuing Education for Registered Persons," to remove the provision that exempts certain registered persons from the continuing education requirements if they have been continuously registered for ten (10) years as of July 1, 1998 and have not been the subject of a disciplinary action

<sup>3</sup> 17 CFR 240.17d-2.

<sup>4</sup> See Securities Exchange Act Release No. 55367 (February 27, 2007), 72 FR 9983 (March 6, 2007) (approving and declaring effective the 17d-2 Agreement between ISE and NASD) ("17d-2 Order").

<sup>5</sup> See 17d-2 Order, *supra* note 4.

<sup>36</sup> 15 U.S.C. 78s(b)(7).

<sup>37</sup> 15 U.S.C. 78s(b)(1).