

SEC Issues First Notice for Actively Managed ETFs

February 5, 2008

On Friday, February 1, 2008, the U.S. Securities and Exchange Commission issued what is expected to be the first of several notices relating to requests for exemptive relief necessary to create and operate actively managed exchange-traded funds (ETFs). (To view the notice, please visit <http://www.sec.gov/rules/ic/2008/ic-28140.pdf>.) The notice was issued for an application filed by PowerShares Capital Management LLC (the Advisor), AER Advisors, Inc. (AER), AIM Distributors, Inc., and PowerShares Actively Managed Exchange-Traded Fund Trust (the Trust and collectively, the Applicants) on May 18, 2007, as amended November 9, 2007, November 16, 2007, November 30, 2007, December 20, 2007, and January 7, 2008 (the PowerShares Application).

PowerShares' Requested Relief

The PowerShares Application requested an order that permits: (a) series of certain open-end management investment companies to issue shares redeemable in large aggregations only (Creation Units); (b) secondary market transactions in shares to occur at negotiated market prices; (c) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (d) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire shares beyond the Section 12(d)(1) limits. This is the same relief typically sought by index-based ETFs. The one notable difference from typical index-based ETF relief is that the Applicants did not pursue relief from Section 24(d) to avoid certain prospectus delivery requirements.

PowerShares' Actively Traded ETFs

While the PowerShares Application provides for the creation of future actively managed ETFs that will invest in equity and fixed-income securities traded in U.S. markets, the PowerShares Application discloses that the Trust will initially offer four actively traded ETFs that will be subadvised by AER and Invesco Institutional (N.A.), Inc. (Invesco). AER will subadvise the PowerShares Active AlphaQ Portfolio and PowerShares Active Alpha Multi-Cap Portfolio (the Initial AER Funds), and Invesco will subadvise the PowerShares Active Mega-Cap Portfolio (Mega-Cap Fund) and PowerShares Active Low Duration Portfolio (Low Duration Fund, and together with the Mega-Cap Fund, the Initial Invesco Funds).

Each Initial AER Fund's investment objective will be to provide long-term capital appreciation by investing in stocks selected according to a quantitative screening methodology developed by AER. The Mega-Cap Fund's investment objective will be to provide long-term growth of capital by investing primarily in the equity securities of mega-capitalization companies according to a quantitative approach developed by Invesco. The Low Duration Fund's investment objective will be to provide total return by investing primarily in U.S. government and corporate debt securities.

Creation and Redemption of PowerShares' Actively Traded ETF Shares

The Funds will operate substantially the same as index-based ETFs. Shares of the Funds will be sold at a price of between \$50 and \$60 per share in Creation Units of between 50,000 and 100,000 shares. Shares of each Fund generally will be sold in Creation Units in exchange for an in-kind deposit by the purchaser of a portfolio of

securities designated by the Advisor (the Deposit Securities), together with the deposit of a relatively small specified cash payment (Cash Component). An investor redeeming a Creation Unit generally will receive (a) a portfolio of securities designated to be delivered for Creation Unit redemptions on the date that the request for redemption is submitted (Fund Securities), which may not be identical to the Deposit Securities required to purchase Creation Units on that date, and (b) a "Cash Redemption Payment." Although the Funds may actively trade their portfolio securities, the resulting portfolio components are not disclosed until the next Business Day. Under accounting procedures followed by the Funds, trades made on the prior Business Day (T) will be booked and reflected in the net asset value (NAV) on the current Business Day (T+1). Accordingly, the Funds 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.

PowerShares' Application Conditions

With two exceptions, the conditions to PowerShares' request for exemptive relief are substantially the same as the conditions imposed on index-based ETFs. The Commission, however, did impose two new conditions not seen in requests for similar index-based ETF relief.

- The Advisor or Fund Subadvisor, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Security for the Fund through a transaction in which the Fund could not engage directly.
- The requested order will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed exchange-traded funds.

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