

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68476; File No. SR-NYSEArca-2012-138]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade PIMCO Foreign Currency Strategy Exchange-Traded Fund Under NYSE Arca Equities Rule 8.600

December 19, 2012.

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> notice is hereby given that, on December 6, 2012, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”): PIMCO Foreign Currency Strategy Exchange-Traded Fund. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the principal office of 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 self-regulatory organization 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 those 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 parts 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 list and trade shares (“Shares”) of the PIMCO Foreign Currency Strategy Exchange-Traded Fund (“Fund”) under NYSE Arca Equities Rule 8.600,<sup>3</sup> which governs the listing and trading of Managed Fund Shares.<sup>4</sup> The Shares will be offered by PIMCO ETF Trust (“Trust”), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.<sup>5</sup>

The investment manager to the Fund is Pacific Investment Management Company LLC (“PIMCO” or “Adviser”). PIMCO Investments LLC serves as the distributor for the Fund (“Distributor”). State Street Bank & Trust Co. serves as the custodian and transfer agent for the Fund (“Custodian” or “Transfer Agent”).

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with

<sup>3</sup> The Commission has previously approved the listing and trading on the Exchange of other actively managed funds under Rule 8.600. *See, e.g.*, Securities Exchange Act Release Nos. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (order approving Exchange listing and trading of five fixed income funds of the PIMCO ETF Trust); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR-NYSEArca-2011-95) (order approving listing and trading of PIMCO Total Return Exchange Traded Fund); and 66670 (March 28, 2012), 77 FR 20087 (April 3, 2012) (SR-NYSEArca-2012-09) (order approving listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

<sup>4</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

<sup>5</sup> The Trust is registered under the 1940 Act. On October 28, 2011, the Trust filed an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) (“1933 Act”) and the 1940 Act relating to the Fund (File Nos. 333-155395 and 811-22250) (“Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28993 (November 10, 2009) (File No. 812-13571) (“Exemptive Order”).

a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>6</sup> In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund’s portfolio. The Adviser is affiliated with a broker-dealer and has implemented a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio. If PIMCO elects to hire a sub-adviser for the Fund that is also affiliated with a broker-dealer, such sub-adviser will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new manager, adviser, or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

#### Principal Investment Strategies

According to the Registration Statement, the Fund will seek maximum

<sup>6</sup> 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 and its 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 under subparagraph (i) above.

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

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

total return,<sup>7</sup> consistent with prudent investment management. The Fund will invest under normal circumstances<sup>8</sup> at least 80% of its assets in currencies of, or Fixed Income Instruments<sup>9</sup> denominated in the currencies of, foreign (non-U.S.) countries, including, but not limited to, a combination of short-term Fixed Income Instruments, money market securities, and currency forwards<sup>10</sup> backed by high-quality, low duration securities (“80% Holdings”).<sup>11</sup>

<sup>7</sup> The “total return” sought by the Fund will consist of income and capital appreciation, if any, which generally arises from decreases in interest rates, foreign currency appreciation, or improving credit fundamentals for a particular sector or security.

<sup>8</sup> The term “under normal circumstances” includes, but is not limited to, the absence of extreme volatility or trading halts in the 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.

<sup>9</sup> “Fixed Income Instruments,” as used generally in the Registration Statement, includes:

- Debt securities issued or guaranteed by the U.S. Government, its agencies or government-sponsored enterprises (“U.S. Government Securities”);
- Corporate debt securities of U.S. and non-U.S. issuers, including convertible securities and corporate commercial paper;
- Mortgage-backed and other asset-backed securities;
- Inflation-indexed bonds issued both by governments and corporations;
- Structured notes, including hybrid or “indexed” securities and event-linked bonds;
- Bank capital and trust preferred securities;
- Loan participations and assignments;
- Delayed funding loans and revolving credit facilities;
- Bank certificates of deposit, fixed time deposits and bankers’ acceptances;
- Repurchase agreements on Fixed Income Instruments and reverse repurchase agreements on Fixed Income Instruments;
- Debt securities issued by states or local governments and their agencies, authorities and other government-sponsored enterprises;
- Obligations of non-U.S. governments or their subdivisions, agencies and government-sponsored enterprises; and
- Obligations of international agencies or supranational entities.

Only those Fixed Income Instruments that are denominated in foreign (non-U.S.) currencies count towards the 80% Holdings (as defined above).

<sup>10</sup> A forward foreign currency exchange contract involves an obligation to purchase or sell a specific currency at a future date at a price set at the time of the contract.

<sup>11</sup> In connection with its holdings in Fixed Income Instruments, the Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. PIMCO’s Counterparty Risk Committee evaluates the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, PIMCO credit analysts evaluate each approved counterparty using various methods of analysis, including company visits, earnings updates, the broker-dealer’s reputation, PIMCO’s past experience with

The Fund will seek exposure to foreign (non-U.S.) currencies likely to outperform the U.S. dollar over the long-term. Assets not invested in the 80% Holdings may be invested in other types of Fixed Income Instruments (e.g., Fixed Income Instruments denominated in U.S. dollars).

According to the Registration Statement, the Fund may invest up to 50% of its total assets in securities and instruments that are economically tied to emerging market countries, which may include assets comprising the 80% Holdings.<sup>12</sup> PIMCO will select the Fund’s country and currency composition based on its evaluation of relative interest rates, inflation rates, exchange rates, monetary and fiscal policies, trade and current account balances, legal and political developments, and other specific factors PIMCO believes to be relevant. The Fund will normally limit its exposure to a single non-U.S. currency (from currency holdings or investments in securities denominated in that currency) to 20% of its total assets.

According to the Registration Statement, the average portfolio duration of the Fund will vary based on PIMCO’s forecast for interest rates and, under normal market conditions, will vary from zero to three years.<sup>13</sup> The Fund may invest in both high yield securities (“junk bonds”) rated Ba, or investment grade securities rated Baa or higher, by Moody’s Investors Service, Inc. (“Moody’s”), or equivalently rated by Standard & Poor’s Ratings Services (“S&P”) or Fitch, Inc. (“Fitch”), or, if unrated, determined by PIMCO to be of comparable quality.<sup>14</sup> The Fund

the broker-dealer, market levels for the counterparty’s debt and equity, the counterparty’s liquidity and its share of market participation.

<sup>12</sup> PIMCO generally considers an instrument to be economically tied to an emerging market country if the issuer or guarantor is a government of an emerging market country (or any political subdivision, agency, authority or instrumentality of such government), if the issuer or guarantor is organized under the laws of an emerging market country, or if the currency of settlement is a currency of an emerging market country. PIMCO has broad discretion to identify countries that it considers to qualify as emerging markets. In making investments in emerging market instruments, the Fund emphasizes those countries with relatively low gross national product per capita and with the potential for rapid economic growth. Emerging market countries are generally located in Asia, Africa, the Middle East, Latin America, and Eastern Europe.

<sup>13</sup> Duration is a measure used to determine the sensitivity of a security’s price to changes in interest rates. The longer a security’s duration, the more sensitive it will be to changes in interest rates.

<sup>14</sup> Securities rated Ba or lower by Moody’s, or equivalently rated by S&P or Fitch, are sometimes referred to as “high yield securities” or “junk bonds,” while securities rated Baa or higher are referred to as “investment grade.” Unrated

currently anticipates that at least 50% of issues of Fixed Income Instruments held by the Fund will be rated investment grade or determined by PIMCO to be of comparable quality.<sup>15</sup> The Fund is non-diversified, which means that it may invest its assets in a smaller number of issuers than a diversified fund.<sup>16</sup>

While corporate debt securities and debt securities economically tied to an emerging market country generally must have \$200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for the Fund, at least 80% of issues of such securities held by the Fund must have \$200 million or more par amount outstanding. The Fund may invest up to 10% of its assets in mortgage-backed securities or in other asset-backed securities, although this limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.

According to the Registration Statement, the Fund may purchase or sell securities on a when-issued, delayed delivery, or forward commitment basis and may engage in short sales. The Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls).

#### Investment Selection Techniques

According to the Registration Statement, in selecting investments for the Fund, PIMCO will develop an outlook for interest rates, currency exchange rates and the economy,

securities may be less liquid than comparably rated securities and involve the risk that the portfolio manager may not accurately evaluate the security’s comparative credit rating. To the extent that the Fund invests in unrated securities, the Fund’s success in achieving its investment objective may depend more heavily on the portfolio manager’s creditworthiness analysis than if the Fund invested exclusively in rated securities. See note 15, *infra*.

<sup>15</sup> PIMCO utilizes sophisticated proprietary techniques in its creditworthiness analysis of unrated securities similar to the processes utilized by Moody’s, S&P, and Fitch in their respective analyses of rated securities. For example, in making a “comparable quality” determination for an unrated security, PIMCO may evaluate the likelihood of payment by the obligor, the nature and provisions of the debt obligation, and/or the protection afforded by, and relative position of, the debt obligation in the event of bankruptcy, reorganization, or other arrangement under laws affecting creditors’ rights. Upon consideration of these and other factors, PIMCO may determine that an unrated security is of comparable quality to rated securities in which the Fund may invest consistent with the Fund’s credit quality guidelines described above.

<sup>16</sup> The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80e).

analyze credit and call risks, and use other asset selection techniques. The proportion of the Fund's investments in securities with particular characteristics (such as quality, sector, interest rate, or maturity) will vary based on PIMCO's outlook for the U.S. economy and the economies of other countries in the world, the financial markets, and other factors. In seeking to identify undervalued currencies, PIMCO may consider many factors, including but not limited to longer-term analysis of relative interest rates, inflation rates, real exchange rates, purchasing power parity, trade account balances, and current account balances, as well as other factors that influence exchange rates such as flows, market technical trends, and government policies. With respect to fixed income investing, PIMCO will attempt to identify areas of the bond market that are undervalued relative to the rest of the market. PIMCO identifies these areas by grouping Fixed Income Instruments into sectors such as money markets, governments, corporates, mortgages, asset-backed, and international. Sophisticated proprietary software then will assist in evaluating sectors and pricing specific investments. Once investment opportunities are identified, PIMCO will shift assets among sectors depending upon changes in relative valuations, credit spreads, and other factors.

#### Additional Information Regarding Principal Investment Strategies<sup>17</sup>

The Fund will invest in currencies and Fixed Income Instruments that are economically tied to foreign (non-U.S.) countries. PIMCO generally considers an instrument to be economically tied to a non-U.S. country if the issuer is a foreign government (or any political subdivision, agency, authority, or instrumentality of such government), or if the issuer is organized under the laws of a non-U.S. country. In the case of certain money market instruments, such instruments will be considered economically tied to a non-U.S. country if either the issuer or the guarantor of such money market instrument is organized under the laws of a non-U.S. country.

The Fund will invest in foreign currencies and may invest in Fixed Income Instruments denominated in foreign (non-U.S.) currencies or receive revenues in foreign currencies, and may engage in foreign currency transactions on a spot (cash) basis and enter into

forward foreign currency exchange contracts.<sup>18</sup> A forward foreign currency exchange contract, which involves an obligation to purchase or sell a specific currency at a future date at a price set at the time of the contract, reduces the Fund's exposure to changes in the value of the currency it will deliver and increases its exposure to changes in the value of the currency it will receive for the duration of the contract. Certain foreign currency transactions may also be settled in cash rather than the actual delivery of the relevant currency. The effect on the value of the Fund is similar to selling securities denominated in one currency and purchasing securities denominated in another currency. A contract to sell foreign currency would limit any potential gain which might be realized if the value of the hedged currency increases. The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency, or to shift exposure to foreign currency fluctuations from one currency to another. Suitable hedging transactions may not be available in all circumstances and there can be no assurance that the Fund will engage in such transactions at any given time or from time to time.

The Fund may invest in variable and floating rate debt securities, which are securities that pay interest at rates that adjust whenever a specified interest rate changes and/or that reset on predetermined dates (such as the last day of a month or calendar quarter). To the extent the Fund invests in variable and floating rate debt securities that are deemed illiquid, the Fund will limit such holdings to an amount consistent with the 15% limitation on illiquid securities discussed below. The Fund may invest in floating rate debt instruments ("floaters") and engage in credit spread trades. Variable and floating rate securities generally are less sensitive to interest rate changes, but may decline in value if their interest rates do not rise as much, or as quickly, as interest rates in general. Conversely, floating rate securities will not generally increase in value if interest rates decline.

The Fund may invest in bank capital securities. Bank capital securities are issued by banks to help fulfill their

regulatory capital requirements. There are two common types of bank capital: Tier I and Tier II. Bank capital is generally, but not always, of investment grade quality. Tier I securities are typically exchange-traded and often take the form of trust preferred securities. Tier II securities are commonly thought of as hybrids of debt and preferred stock. Tier II securities are typically traded over-the-counter, are often perpetual (with no maturity date), callable, and have a cumulative interest deferral feature. This means that under certain conditions, the issuer bank can withhold payment of interest until a later date. However, such deferred interest payments generally earn interest.

The Fund may make short sales as part of its overall portfolio management strategies or to offset a potential decline in value of a security.

#### Other Portfolio Holdings and Non-Principal Investment Strategies

For the purpose of achieving income, the Fund may lend its portfolio securities to brokers, dealers, and other financial institutions, provided a number of conditions are satisfied, including that the loan is fully collateralized. When the Fund lends portfolio securities, its investment performance will continue to reflect changes in the value of the securities loaned, and the Fund will also receive a fee or interest on the collateral. Cash collateral received by the Fund in securities lending transactions may be invested in short-term liquid Fixed Income Instruments or in money market or short-term mutual funds or similar investment vehicles, including affiliated money market or short-term mutual funds.

The Fund may invest in, to the extent permitted by Section 12(d)(1)(A) of the 1940 Act, other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, including other exchange traded funds, provided that the Fund's investment in units or shares of investment companies and other open-end collective investment vehicles will not exceed 10% of the Fund's total assets. The Fund may invest securities lending collateral in one or more money market funds to the extent permitted by Rule 12d1-1 under the 1940 Act, including series of PIMCO Funds, an affiliated open-end management investment company managed by PIMCO.

Subject to the restrictions and limitations of the 1940 Act, the Fund may elect to pursue its investment objective either by investing directly in

<sup>17</sup> Many of the investment strategies of the Fund are discretionary, which means that PIMCO can decide from time to time whether to use them or not.

<sup>18</sup> The Fund will limit its investments in currencies to those currencies with a minimum average daily foreign exchange turnover of USD \$1 billion, as determined by the Bank for International Settlements ("BIS") Triennial Central Bank Survey. As of the most recent BIS Triennial Central Bank Survey, at least 52 separate currencies had minimum average daily foreign exchange turnover of USD \$1 billion. For a list of eligible BIS currencies, see [www.bis.org](http://www.bis.org).

securities or instruments, or by investing in one or more underlying investment vehicles or companies that have substantially similar investment objectives and policies as the Fund.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment). Certain financial instruments, including, but not limited to, Rule 144A securities, loan participations and assignments, delayed funding loans, revolving credit facilities,<sup>19</sup> and fixed- and floating-rate loans<sup>20</sup> will be included in the 15% limitation on illiquid securities. 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. Illiquid securities 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.<sup>21</sup>

<sup>19</sup> The Fund may enter into, or acquire participations in, delayed funding loans and revolving credit facilities, in which a lender agrees to make loans up to a maximum amount upon demand by the borrower during a specified term. These commitments may have the effect of requiring the Fund to increase its investments in a company at a time when it might not otherwise decide to do so (including at a time when the company's financial condition makes it unlikely that such amounts will be repaid). To the extent that the Fund is committed to advance additional funds, it will segregate or "earmark" assets determined to be liquid by PIMCO in accordance with procedures established by the Fund's Board of Trustees in an amount sufficient to meet such commitments.

<sup>20</sup> The Fund may invest in fixed- and floating-rate loans, which investments generally will be in the form of loan participations and assignments of portions of such loans. Participations and assignments involve special types of risk, including credit risk, interest rate risk, liquidity risk, and the risks of being a lender.

<sup>21</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); and Investment Company Act Release No. 17452 (April 23, 1990),

The Fund intends to qualify annually and elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code.<sup>22</sup>

The Fund may not concentrate its investments in a particular industry, as that term is used in the 1940 Act, and as interpreted, modified, or otherwise permitted by regulatory authority having jurisdiction from time to time.<sup>23</sup>

If PIMCO believes that economic or market conditions are unfavorable to investors, PIMCO may temporarily invest up to 100% of the Fund's assets in certain defensive strategies, including holding a substantial portion of the Fund's assets in cash, cash equivalents, or other highly rated short-term securities, including securities issued or guaranteed by the U.S. government, its agencies, or instrumentalities.

The Fund will not invest in any non-U.S. registered equity securities, except if such securities are traded on exchanges that are members of the Intermarket Surveillance Group ("ISG").

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.*, 2Xs and 3Xs) of the Fund's broad-based securities market index (as defined in Form N-1A).<sup>24</sup>

The Fund will not invest in options contracts, futures contracts, or swap agreements, in accordance with the Trust's Exemptive Order.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Fund's Reporting Authority will 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 Fund's portfolio. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3

55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

<sup>22</sup> 26 U.S.C. 851.

<sup>23</sup> See Form N-1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, *e.g.*, Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

<sup>24</sup> The Fund's broad-based securities market index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

under the Exchange Act,<sup>25</sup> as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value ("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.

#### Net Asset Value

The NAV of the Fund's Shares will be determined by dividing the total value of the Fund's portfolio investments and other assets, less any liabilities, by the total number of Shares outstanding.

Fund Shares will be valued as of the close of trading (normally 4:00 p.m. Eastern time ("E.T. ")) on each business day. Information that becomes known to the Fund or its agents after the NAV has been calculated on a particular day will not generally be used to retroactively adjust the price of a security or the NAV determined earlier that day. The Fund reserves the right to change the time its NAV is calculated if the Fund closes earlier, or as permitted by the Commission.

For purposes of calculating NAV, portfolio securities and other assets for which market quotes are readily available will be valued at market value. Market value is generally determined on the basis of last reported sales prices, or if no sales are reported, based on quotes obtained from a quotation reporting system, established market makers, or pricing services. Domestic and foreign fixed income securities will normally be valued on the basis of quotes obtained from brokers and dealers or pricing services using data reflecting the earlier closing of the principal markets for those securities. Prices obtained from independent pricing services use information provided by market makers or estimates of market values obtained from yield data relating to investments or securities with similar characteristics.

#### Creations and Redemptions of Shares

According to the Registration Statement, Shares of the Fund that trade in the secondary market will be "created" at NAV<sup>26</sup> by Authorized

<sup>25</sup> 17 CFR 240.10A-3.

<sup>26</sup> The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of trading on the New York Stock Exchange ("NYSE"), generally 4:00 p.m. E.T. ("NAV Calculation Time") on any business day. NAV per Share is calculated by dividing the Fund's net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, see the Registration Statement.

Participants only in block-size Creation Units of 100,000 Shares or multiples thereof. The Fund will offer and issue Shares at their NAV per Share generally in exchange for a basket of debt securities held by the Fund ("Deposit Securities") together with a deposit of a specified cash payment ("Cash Component"). Alternatively, the Fund may issue Creation Units in exchange for a specified all-cash payment ("Cash Deposit"). Similarly, Shares can be redeemed only in Creation Units, generally in-kind for a portfolio of debt securities held by the Fund and/or for a specified amount of cash.

Except when aggregated in Creation Units, Shares will not be redeemable by the Fund. The prices at which creations and redemptions occur are based on the next calculation of NAV after an order is received. Requirements as to the timing and form of orders are described in the Authorized Participant agreement. PIMCO will make available on each business day via the National Securities Clearing Corporation ("NSCC"), prior to the opening of business (subject to amendments) on the Exchange (currently 9:30 a.m. E.T.), the identity and the required amount of each Deposit Security and the amount of the Cash Component (or Cash Deposit) to be included in the current Fund Deposit<sup>27</sup> (based on information at the end of the previous business day). Creations and redemptions must be made by an Authorized Participant or through a firm that is either a participant in the Continuous Net Settlement System of the NSCC or a DTC participant, and in each case, must have executed an agreement with the Distributor and Transfer Agent with respect to creations and redemptions of Creation Unit aggregations.

Additional information regarding the Trust, the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions, and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to but not defined in this proposed rule change are defined in the Registration Statement.

#### Availability of Information

The Trust's Web site ([www.pimcoetfs.com](http://www.pimcoetfs.com)), which is publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be

<sup>27</sup> The Deposit Securities and Cash Component or, alternatively, the Cash Deposit, constitute the "Fund Deposit," which represents the investment amount for a Creation Unit of the Fund.

downloaded. The Trust's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV ("Bid/Ask Price"),<sup>28</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session (9:30 a.m. E.T. to 4:00 p.m. E.T.) on the Exchange, the Fund will disclose on the Trust's Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>29</sup>

On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security and financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge. In addition, price information for the debt securities and other financial instruments held by the Fund will be available through major market data vendors.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the NSCC. The basket represents one Creation Unit of the Fund. The NAV of the Fund will normally be determined as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) on each business day.

<sup>28</sup> The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

<sup>29</sup> Under accounting procedures 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"). 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.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Form N-CSR and Form N-SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's Web site at [www.sec.gov](http://www.sec.gov). Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.<sup>30</sup> The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.<sup>31</sup> Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments comprising 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. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets

<sup>30</sup> Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from the CTA or other data feeds.

<sup>31</sup> See NYSE Arca Equities Rule 7.12, Commentary .04.

forth circumstances under which Shares of the Fund may be halted.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

#### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>32</sup>

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks

associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day.

#### 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>33</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Fund will not invest in any non-U.S registered equity

securities, except if such securities are traded on exchanges that are members of the ISG. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage; that is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.*, 2Xs and 3Xs) of the Fund's broad-based securities market index (as defined in Form N-1A). According to the Registration Statement, the Fund will invest under normal circumstances at least 80% of its assets in currencies of, or Fixed Income Instruments denominated in the currencies of, foreign countries, including, but not limited to, a combination of short-term Fixed Income Instruments, money market securities, and currency forwards backed by high-quality, low duration securities. The Fund may invest up to 50% of its total assets in securities and instruments (including currencies and Fixed Income Instruments) that are economically tied to emerging market countries. The Fund currently anticipates that at least 50% of issues of Fixed Income Instruments held by the Fund will be rated investment grade or determined by PIMCO to be of comparable quality. The Fund will normally limit its exposure to a single non-U.S. currency (from currency holdings or investments in securities denominated in that currency) to 20% of its total assets. Further, the Fund will limit its investments in currencies to those currencies with a minimum average daily foreign exchange turnover of USD \$1 billion as determined by the BIS Triennial Central Bank Survey. The Fund may invest in corporate debt securities. While corporate debt securities and debt securities economically tied to an emerging market country generally must have \$200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for the Fund, at least 80% of issues of such securities held by the Fund must have \$200 million or more par amount outstanding. The Fund may invest up to 10% of its assets in mortgage-backed securities or in other asset-backed securities, although this limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities. The Fund may hold up to 15% of its net assets in illiquid securities. The Fund will not invest in options contracts, futures contracts, or swap agreements.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the

<sup>32</sup> For a list of the current members of ISG, see <http://www.isgportal.org>. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>33</sup> 15 U.S.C. 78f(b)(5).

public interest in that the Exchange 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. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Portfolio Indicative Value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on the Trust's Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Trust's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. In connection with its holdings in Fixed Income Instruments, the Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that

will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Adviser is affiliated with a broker-dealer and has implemented a "fire wall" with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, the Fund's Reporting Authority will 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 Fund's portfolio.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

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

- (A) By order approve or disapprove the 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-NYSEArca-2012-138 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2012-138. 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 Section, 100 F Street, NE., Washington, DC 20549 on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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-NYSEArca-2012-138 and should be submitted on or before January 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>34</sup> 17 CFR 200.30-3(a)(12).