SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Offer Partial Cabins and Cabinet Upgrades as Part of its Co-location Services and to Amend its Price List to Reflect the New Services

December 18, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) and Rule 19b–4 thereunder, notice is hereby given that on December 12, 2013, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 offer partial cabinets and cabinet upgrades as part of its co-location services and to amend its Price List to reflect the new services. The Exchange proposes to implement the fee change effective December 16, 2013. The text of the proposed rule change is available on the Exchange’s Web site at 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.

1. Purpose

The Exchange proposes to offer partial cabinets and cabinet upgrades as part of its co-location services and to amend its Price List to reflect the new services.4 The Exchange proposes to implement the fee change effective December 16, 2013.

Partial Cabinets

A User is able to request a physical cabinet to house its servers and other equipment in the data center.5 Currently, a User only has the option of receiving an entire cabinet that is dedicated solely to that User (“dedicated cabinet”). The Exchange proposes to expand its co-location services to offer a partial cabinet alternative (“partial cabinet”). Partial cabinets would be made available in increments of eight-rack units of space.6 The Exchange would allocate each eight-rack unit up to two kilowatts (“kWs”) of power.7 Consistent with existing pricing for dedicated cabinets, the Exchange would charge Users an

---

4 The Securities and Exchange Commission (“Commission”) initially approved the Exchange’s co-location services in Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56) (the “Original Co-location Approval”). The Exchange operates a data center in Mahwah, New Jersey (the “data center”) from which it provides co-location services to Users. The Exchange’s co-location services allow Users to rent space in the data center so they may locate their electronic servers in close physical proximity to the Exchange’s trading and execution system. See id. at 59310.

5 For purposes of the Exchange’s co-location services, the term “User” includes (i) member organizations, as that term is defined in NYSE Rule 2(b); (ii) Sponsored Participants, as that term is defined in NYSE Rule 123B.30(a)(ii)(B); and (iii) non-member organization broker-dealers and vendors that request to receive co-location services directly from the Exchange. See, e.g., Securities Exchange Act Release No. 65973 (December 15, 2011), 76 FR 79232 (December 21, 2011) (SR–NYSE–2011–53). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange’s affiliates NYSE MKT LLC and NYSE Arca, Inc. See Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

---

Kevin M. O’Neill, Deputv Secretary.

[FR Doc. 2013–30592 Filed 12–23–13; 8:45 am]
dedicated cabinet could continue to
However, Users that do require a
space demands, including those Users
for the installation of an
cabinet would be less than the services required
for the installation of a dedicated
cabinet. The current Initial Install
fee is $800 per dedicated
cabinet, which includes initial racking of
equipment in the dedicated cabinet
and provision of up to 10 cables and
four hours of labor. The Exchange
proposes to charge a $400 Initial Install
fee for an eight-rack unit in a
partial cabinet, which would include
initial racking of equipment and
 provision of up to five cables and two
hours of labor.

### Cabinet Upgrades

The Exchange makes dedicated
cabinets available with standard power
allocation of either four or eight kWs. However, Users that require additional
power allocation may prefer to
maintain their hardware within a particular
dedicated cabinet rather than add an
additional dedicated cabinet.

Specifically, Users may develop their
hardware infrastructure within a
particular dedicated cabinet in such a
way that, if expansion of such hardware
is needed, it can be accomplished
within the space constraints of that
particular dedicated cabinet. If this type of
User requires additional power
allocation, it would likely want to so
modify its existing cabinet rather than
taking an additional dedicated cabinet
due to the expense of re-developing its
infrastructure within such additional
dedicated cabinet. A $5,000 initial
dedicated cabinet fee would also apply
if the User received an additional
dedicated cabinet.

The Exchange proposes to offer a new
"Cabinet Upgrade" alternative and
related fee in order to accommodate
requests for additional power allocation
beyond the typical amount that the
Exchange allocates per dedicated

cabinet, at which point the Exchange
must upgrade the cabinet's power
capacity. These Cabinet Upgrades
typically entail overhauling wiring,
circuitry and hardware for the dedicated
cabinet so that it can handle the
increased power. Cabinet Upgrades
require additional Exchange resources
beyond those covered under the initial
dedicated cabinet fee or the Initial
Install Services fee, including with
respect to labor and equipment.

The Exchange proposes to charge a
one-time Cabinet Upgrade fee of $9,200
when a User requests additional power
allocation for its dedicated cabinet such
that the Exchange must upgrade the
dedicated cabinet's capacity. A Cabinet
Upgrade would be required when power
allocation demands exceed 11 kWs.
However, in order to incentivize Users
to upgrade their dedicated cabinets, the
Exchange proposes that the Cabinet
Upgrade fee would be $4,600 for a User
that submits a written order for a
Cabinet Upgrade by January 31, 2014,
provided that the Cabinet Upgrade
becomes fully operational by March 31,
2014.

### General

As is the case with all Exchange
co-location arrangements, (i) neither a User
nor any of the User’s customers would
be permitted to submit orders directly to
the Exchange unless such User or
customer is a member organization, a
Sponsored Participant or an agent
thereof (e.g., a service bureau providing
order entry services); (ii) use of the
colocation services proposed herein would
be completely voluntary and available
to all Users on a non-discriminatory
basis; and (iii) a User would only

---

9 The second kW would therefore cost $1,200.

10 A User is generally able to determine an
approximate amount of power that it will typically
consume in its dedicated cabinet. A User would
request either a four or eight kW dedicated
cabinet based on its anticipated peak power consumption.
A User’s typical power consumption would be
expected to be less than this anticipated peak power consumption,
but could also rise above this
anticipated peak power consumption during certain
times of the day or certain periods of the month
when equipment in the cabinet consumes
additional power.

11 A dedicated cabinet could be upgraded to
accommodate a total allocation of approximately 20 kWs of power, after which a User
would require an additional dedicated cabinet.

12 As is currently the case, Users that receive
colocation services from the Exchange will not receive
any means of access to the Exchange’s trading and execution systems
that is separate from, or superior to,
that of other Users. In this regard, all orders sent
to the Exchange enter the Exchange’s trading and
execution systems through the same order gateway.
incurs one charge for the particular colocation service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates. The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(5) of the Act, in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. First, the proposed partial cabinets would make an alternative available to Users that do not need a dedicated cabinet in the data center, such as those Users with minimal power or cabinet space demands, including those Users for which the costs attendant with a dedicated cabinet are too burdensome. However, Users that do require a dedicated cabinet could continue to request them. Second, the proposed Cabinet Upgrades would make an alternative available to Users that have already invested in hardware infrastructure within a particular dedicated cabinet and that require additional power allocation, but do not want an additional dedicated cabinet due to the expense of re-developing infrastructure within such additional dedicated cabinet. The Exchange believes that the proposed rule change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because it would provide Users with additional choices with respect to the optimal size of their cabinets and the number of cabinets they utilize, which could therefore lead to cost savings that Users may choose to pass on to their customers.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act, in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. Overall, the Exchange believes that the proposed change is consistent with the Act because the Exchange offers the colocation services described herein (i.e., the proposed partial cabinets and Cabinet Upgrades) as a convenience to Users, but in doing so will incur certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and ongoing monitoring, support and maintenance of such services. Additionally, the proposed fees relate to the level of services provided by the Exchange and, in turn, received by the User. The Exchange believes that the proposed pricing for partial cabinets is reasonable because a partial cabinet would be a more economical option for certain Users that require only limited power or limited cabinet space, as compared to pricing for a dedicated cabinet, whereas a dedicated cabinet would be a more economical option for certain Users that have higher power or space demands. The proposed pricing for partial cabinets and the Cabinet Upgrade fee is also reasonable because it would allow Users to select options that are better suited for their needs (e.g., a dedicated cabinet compared to a partial cabinet and a Cabinet Upgrade compared to an additional dedicated cabinet). The proposed pricing for partial cabinets is also reasonable because it is comparable to pricing for “shared cabinet space” available to users of co-location facilities of The NASDAQ Stock Market LLC (“NASDAQ”). Specifically, NASDAQ charges $600 for 500 watts (“Ws”) of power allocation in shared cabinet space. If a NASDAQ co-location user were to request up to two kWs of allocated power in shared cabinet space it would be charged $2,400 per month (one kW is equal to 1.000 Ws and two kWs is therefore equal to 2,000 Ws), which is comparable to the proposed $2,700 monthly recurring charge for the same power allocation in an eight-rack unit in a partial cabinet in the data center. However, the Exchange understands that each unit of NASDAQ shared cabinet space is smaller in space than the partial cabinets proposed by the Exchange (e.g., four-rack units on NASDAQ compared to eight-rack units in the Exchange’s data center). The Exchange also believes that the proposed Initial Install Services fee for a partial cabinet is reasonable because it is 50% of the dedicated cabinet Initial Install Services fee and likewise provides for 50% of the resources (i.e., two hours of labor instead of four hours and five cables instead of 10 cables) associated with the dedicated cabinet Initial Install Services fee. The Exchange also believes that the Cabinet Upgrade fee is reasonable because it would function similar to the NASDAQ charges for comparable services. In particular, NASDAQ charges a premium initial installation fee of $7,000 for a “Super High Density Cabinet” (between 10 kWs and 17.3 kWs) compared to $3,500 for other types of cabinets with less power. The Exchange charges only one flat rate for its initial cabinet fees ($5,000), regardless of the amount of power allocation. NASDAQ also charges an additional $7,000 for a Super High Density Cabinet Kit in relation to the additional customized equipment required to adequately cool a Super High Density Cabinet. The Exchange understands that NASDAQ therefore charges at least $10,500 in additional initial costs for a Super High Density Cabinet compared to other cabinets (compared to the proposed $9,200 Cabinet Upgrade fee). The Exchange also believes that the proposed Cabinet Upgrade fee is reasonable because it would permit the Exchange to recover

17 See, e.g., supra note 9.
18 See NASDAQ Rule 7034.
19 NASDAQ’s initial fee for shared cabinet space is charged on an hourly rate change and is therefore difficult to compare to the proposed initial fee for partial cabinets in the Exchange’s data center, which is fixed.
20 See supra note 18.
21 Id.
its expenses related to Cabinet Upgrades.

The proposed 50% reduced Cabinet Upgrade fee for a User that submits a written order for a Cabinet Upgrade by January 31, 2014, provided that the Cabinet Upgrade becomes fully operational by March 31, 2014, is reasonable because it would provide an incentive for Users to upgrade the capacity of their dedicated cabinets. As with fees for existing co-location services, the fees proposed herein would be charged only to those Users that voluntarily select the related services, which would be available to all Users. The Exchange therefore believes that the proposed change is equitable and not unfairly discriminatory because it would result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services would be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (i.e., the same products and services are available to all Users).

For the reasons above, the proposed change would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange’s statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization’s Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,22 the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because any market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange could have access to the co-location services provided in the data center. This is also true because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (i.e., the same range of products and services are available to all Users).

The Exchange believes that the proposed partial cabinet and Cabinet Upgrade alternatives would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because they would enhance competition by making additional choices in services available to Users and thereby satisfy User demand for partial cabinets and for dedicated cabinets with increased power capacity. The proposed change would also enhance competition because it would help Users meet the growing needs of their business operations. Moreover, the Exchange believes that the proposed change would enhance competition between competing marketplaces by enabling the Exchange to provide services to Users that are similar to services available on other markets. In this regard, the Exchange notes that NASDAQ also makes a shared cabinet space option and a “Super High Density Cabinet” option available to users of its co-location facilities.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if, for example, they deem fee levels at a particular venue to be excessive or if they determine that another venue’s products and services are more competitive than on the Exchange. In such an environment, the Exchange must continually review, and consider adjusting, the services it offers as well as any corresponding fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act24 and Rule 19b–4(f)(6) thereunder.25 Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act26 and Rule 19b–4(f)(6) thereunder.27

A proposed rule change filed under Rule 19b–4(f)(6)28 normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),29 the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange requested waiver of the 30-day operative delay in order to immediately implement the proposed rule change so that Users may experience the benefits of such proposed change as soon as possible. The Exchange stated that the proposal would merely make smaller incremental changes in a standard, dedicated cabinet available on a voluntary basis to Users that do not require a full, dedicated cabinet. Users that do require full, dedicated cabinets could continue to request them. The Exchange also stated that the proposal would provide greater flexibility to Users that prefer to increase power allocation in a particular dedicated cabinet rather than incurring the cost of maintaining an additional dedicated cabinet. The Exchange further represented that it operates in a highly competitive market in which several competing exchanges already offer similar co-location services. For the above reasons, the Commission believes waiver of the operative delay is appropriate and hereby grants the Exchange’s request and designates the proposed operational upon filing.30

At any time within 60 days of the filing of such proposed rule change, the

22 See supra note 18.
27 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.
30 For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).
Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) 31 of the Act to determine whether the proposed rule change should be approved or 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. Please include File Number SR–NYSE–2013–81 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–NYSE–2013–81. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2013–81 and should be submitted on or before January 14, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. 32

Kevin M. O’Neill,
Deputy Secretary.

December 18, 2013.

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Listing and Trading of Shares of PIMCO Diversified Income Exchange-Traded Fund, PIMCO Low Duration Exchange-Traded Fund and PIMCO Real Return Exchange-Traded Fund under NYSE Arca Equities Rule 8.600

December 18, 2013.

I. Introduction

On October 15, 2013, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 1 and Rule 19b–4 thereunder, 2 a proposed rule change to list and trade shares ("Shares") of the PIMCO Diversified Income Exchange-Traded Fund, PIMCO Low Duration Exchange-Traded Fund, and PIMCO Real Return Exchange-Traded Fund (individually, "Fund" and, collectively, "Funds") under NYSE Arca Equities Rule 8.600. On October 29, 2013, the Exchange filed Amendment No. 1 to the proposal. 3 The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the Federal Register on November 5, 2013. 4 The Commission received no comments on the proposal. This order grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Funds pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. 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. 5 The investment manager to the Funds will be Pacific Investment Management Company LLC ("PIMCO" or "Adviser"). PIMCO Investments LLC will serve as the distributor for the Funds. State Street Bank & Trust Co. will serve as the custodian and transfer agent for the Funds. The Exchange represents that the Adviser is not a registered broker-dealer but is affiliated with a broker-dealer and has implemented a firewall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to a Fund’s respective portfolio. 6 The Exchange makes the following representations and statements in describing the Funds and their respective investment strategies, including other portfolio holdings and investment limitations.

PIMCO Diversified Income Exchange-Traded Fund

The Fund’s investment objective will be to seek maximum total return, consistent with preservation of capital and prudent investment management. The Fund will seek to achieve its investment objective by investing under normal circumstances 7 at least 65% of...


3 Amendment No. 1 replaced and superseded the proposal in its entirety.


5 The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). On April 22, 2013, the Trust filed with the Commission an amendment to the Trust’s registration statement on Form N–1A under the Securities Act of 1933 ("Securities Act") and under the 1940 Act relating to the Funds (File Nos. 333–153395 and 811–22250) ("Registration Statement").

6 See Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that in the event (a) the Adviser or any sub-adviser is a registered broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a firewall with respect to its relevant personnel or a broker-dealer affiliate regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information relating such portfolio.

7 The term “under normal circumstances” includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed...