

(“Commission”), 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> a proposed rule change to permit the listing and trading of P.M.-settled series on certain broad-based index options on a pilot basis. The proposed rule change was published for comment in the **Federal Register** on October 30, 2018.<sup>3</sup> The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act<sup>4</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is December 14, 2018. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> designates January 28, 2019 as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR-CboeEDGX-2018-037).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2018-27404 Filed 12-18-18; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84818; File No. SR-NYSEArca-2018-75]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Regarding the Listing and Trading of Shares of the PGIM Ultra Short Bond ETF

December 13, 2018.

#### I. Introduction

On October 12, 2018, 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”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify the rule governing the listing and trading of shares (“Shares”) of the PGIM Ultra Short Bond ETF (“Fund”). The Commission previously approved the listing and trading of the Shares subject to a representation that the Fund’s investments in OTC derivatives would not exceed 20% of the Fund’s net assets.<sup>3</sup> The Exchange now seeks to permit the Fund to invest up to 50% of its net assets in OTC derivatives under certain circumstances.

The proposed rule change was published for comment in the **Federal Register** on October 31, 2018.<sup>4</sup> On November 7, 2018, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> The Commission has not received any comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

#### II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Shares are Managed Fund Shares that do not satisfy all of the criteria for generic listing set forth in Commentary

.01 to NYSE Arca Rule 8.600-E. Thus, the Exchange currently lists and trades the Shares pursuant to a rule (“Listing Rule”) approved by Commission.<sup>6</sup> The Listing Rule requires that the Fund’s portfolio meet all requirements of Commentary .01 to NYSE Arca Rule 8.600-E except for those set forth in Commentary .01(a)(1), Commentary .01(b)(4) and Commentary .01(b)(5).<sup>7</sup> Accordingly, the Listing Rule limits the Fund’s investments in OTC derivatives to 20% of the Fund’s assets and, for purposes of calculating this limit, the portfolio’s investment in OTC derivatives is calculated using the aggregate gross notional value of the OTC derivatives.<sup>8</sup>

The Exchange proposes to allow: (1) Up to 50% of the Fund’s assets to be invested in OTC derivatives that are used to reduce currency, interest rate, credit, or duration risk arising from the Fund’s investments (“Hedging Derivatives”); and (2) up to 20% of the Fund’s assets to be invested in OTC derivatives other than Hedging Derivatives. For purposes of calculating the proposed alternative limits, the portfolio’s investments in OTC derivatives would be calculated using the aggregate gross notional value of the OTC derivatives.

According to the Exchange, the Fund’s adviser and sub-adviser believe that it is important to provide the Fund with additional flexibility to manage risk associated with its investments and, depending on market conditions, it may be necessary for the Fund to utilize additional OTC derivatives for this purpose.<sup>9</sup> Generally, according to the Exchange, OTC derivatives may be customized to a greater degree than exchange-listed derivatives, which may allow the Fund to better hedge its assets and may mitigate trading its costs.<sup>10</sup>

The Exchange also states that the Commission has previously approved an exception from the requirements of Commentary .01(e) relating to investments in OTC derivatives similar to those proposed with respect to the Fund.<sup>11</sup>

#### III. Discussion

After careful review, the Commission finds that the Exchange’s proposed rule change, as modified by Amendment No. 1, to amend the Listing Rule applicable to the Shares consistent with the Act and the rules and regulations

<sup>6</sup> See Prior Order, *supra* note 3.

<sup>7</sup> See *id.*

<sup>8</sup> See Commentary .01(e) to NYSE Arca Rule 8.600-E.

<sup>9</sup> See Notice, *supra* note 3, 83 FR at 59794.

<sup>10</sup> See *id.*

<sup>11</sup> See *id.*, 83 FR at 54794, n.10.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 84481 (Oct. 24, 2018), 83 FR 54624.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> *Id.*

<sup>6</sup> 17 CFR 200.30-3(a)(31).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 83319 (May 24, 2018), 83 FR 25097 (May 31, 2018) (SR-NYSEArca-2018-15) (“Prior Order”).

<sup>4</sup> See Securities Exchange Act Release No. 84486 (Oct. 25, 2018), 83 FR 54794 (“Notice”).

<sup>5</sup> In Amendment No. 1, the Exchange: (1) Corrected its description of the current listing rule applicable to the Shares; (2) clarified the scope of the Fund’s permitted investments in over-the-counter (“OTC”) derivatives; (3) supplemented its arguments in support of the proposed rule change; and (4) made technical changes. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysearca-2018-75/srnysearca201875-4628265-176398.pdf>. Amendment No. 1 is not subject to notice and comment because it does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues.

thereunder applicable to a national securities exchange.<sup>12</sup> The Exchange proposes to modify only the Listing Rule's limit on OTC derivatives, and the proposed alternative limits are substantially similar to OTC derivatives limits for another issue of Managed Fund Shares that also invests principally in fixed-income securities.<sup>13</sup> The Commission approved a listing rule allowing that fund to similarly invest up to: (1) 50% of its assets in OTC derivatives to reduce currency, interest rate, or credit risk arising from the fund's investments; and (2) 20% of its assets in OTC derivatives other than OTC derivatives used to hedge the fund's portfolio against currency, interest rate, or credit risk.<sup>14</sup>

For the foregoing reason, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>15</sup> that the proposed rule change (SR-NYSEArca-2018-75), as modified by Amendment No. 1 be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2018-27407 Filed 12-18-18; 8:45 am]

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<sup>12</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> See Securities Exchange Act Release No. 80657 (May 11, 2017), 82 FR 22702 (May 17, 2017) (SR-NYSEArca-2017-09). The Commission also notes that the proposed alternative limits are consistent with derivatives requirements in listing rules for another issue of Managed Fund Shares. See Securities Exchange Act Release No. 84047 (September 6, 2018), 83 FR 46200 (September 12, 2018) (SR-NASDAQ-2017-128).

<sup>14</sup> See Securities Exchange Act Release No. 80657, *supra* note 13. The addition of duration risk to the uses of Hedging Derivative in the current proposal does not alter the Commission's analysis.

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

<sup>16</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84819; File No. SR-NYSEArca-2018-90]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Fees and Charges

December 13, 2018.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") <sup>2</sup> and Rule 19b-4 thereunder, <sup>3</sup> notice is hereby given that, on December 3, 2018, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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 amend the NYSE Arca Equities Fees and Charges ("Fee Schedule"). The proposed rule change is available on the Exchange's website 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend the Fee Schedule by increasing the credit

applicable to the Retail Order Step-Up Tier 2, as described below.

The Exchange currently has a Retail Order Step-Up Tier 2 credit of \$0.0035 per share for Retail Orders <sup>4</sup> that provide displayed liquidity during the month in Tape A, Tape B and Tape C Securities that applies to ETP Holders, including Market Makers, that provide liquidity an average daily share volume per month of 1.10% or more of the U.S. CADV, and execute an ADV of Retail Orders with a time-in-force designation of Day that add or remove liquidity during the month that is an increase of 0.35% or more of the U.S. CADV above their April 2018 ADV taken as a percentage of U.S. CADV. Retail Orders with a time-in-force designation of Day that remove liquidity from the Book are not charged a fee.<sup>5</sup> The Exchange proposes to increase the current credit for Retail Orders that provide displayed liquidity during the month in Tape A, Tape B and Tape C Securities to \$0.0038 per share. The Exchange is not proposing any other change to the Retail Order Step-Up Tier 2.

For all other fees and credits, tiered or basic rates apply based on a firm's qualifying levels.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>7</sup> 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.

<sup>4</sup> A Retail Order is an agency order that originates from a natural person and is submitted to the Exchange by an ETP Holder, provided that no change is made to the terms of the order to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Securities Exchange Act Release No. 67540 (July 30, 2012), 77 FR 46539 (August 3, 2012) (SR-NYSEArca-2012-77).

<sup>5</sup> See Securities Exchange Act Release No. 83828 (August 10, 2018), 83 FR 40816 (August 16, 2018) (SR-NYSEArca-2018-58). An ETP Holder that qualifies for the Retail Order Step-Up Tier 2 also receives a credit of \$0.0035 per share for orders (not just Retail Orders) that provide displayed liquidity to the order book in Tape C Securities, and an incremental credit of \$0.0002 per share for orders that provide non-displayed liquidity to the order book in Tape C Securities. The incremental credit is in addition to the ETP Holder's or Market Maker's Tiered or Basic Rate credit(s). Pursuant to the Retail Order Step-Up Tier 2, ETP Holders and Market Makers pay a fee of \$0.0027 per share for orders that take liquidity from the order book in Tape C Securities.

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

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.