

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-CBOE-2013-111 and should be submitted on or before December 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-70905; File No. SR-NYSEArca-2013-122]**

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Use of Derivative Instruments by PIMCO Total Return Exchange Traded Fund

November 20, 2013.

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 November 6, 2013, 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 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 amend the description of the means of achieving the investment objective applicable to the PIMCO Total Return Exchange Traded Fund relating to its Use [sic] of derivative instruments. 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 Commission has approved the listing and trading on the Exchange of shares ("Shares") of the PIMCO Total Return Exchange Traded Fund ("Fund"),<sup>4</sup> under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares are offered by PIMCO ETF Trust (the "Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end

<sup>1</sup> See Securities Exchange Act Release No. 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR-NYSEArca-2011-95) ("Prior Order"). See also Securities Exchange Act Release No. 65988 (December 16, 2011), 76 FR 79741 (December 22, 2011) (SR-NYSEArca-2011-95) ("Prior Notice," and together with the Prior Order, the "Prior Release").

management investment company.<sup>5</sup> The investment manager to the Fund is Pacific Investment Management Company LLC ("PIMCO" or the "Adviser").

In this proposed rule change, the Exchange proposes changing the description of the Fund's use of derivative instruments, as described below.

On December 6, 2012, the staff of the Commission's Division of Investment Management ("Division") issued a no-action letter ("No-Action Letter") relating to the use of derivatives by actively-managed exchange traded funds ("ETFs").<sup>6</sup> The No-Action Letter noted that, in March of 2010, the Commission announced in a press release that the staff was conducting a review to evaluate the use of derivatives by mutual funds, ETFs, and other investment companies and that, pending completion of this review, the staff would defer consideration of exemptive requests under the 1940 Act relating to, among others, actively-managed ETFs that would make significant investments in derivatives.

The No-Action Letter stated that Division staff will no longer defer consideration of exemptive requests under the 1940 Act relating to actively-managed ETFs that make use of derivatives provided that they include representations to address some of the concerns expressed in the Commission's March 2010 press release. These representations are: (i) That the ETF's board periodically will review and approve the ETF's use of derivatives and how the ETF's investment adviser assesses and manages risk with respect to the ETF's use of derivatives; and (ii) that the ETF's disclosure of its use of derivatives in its offering documents and periodic reports is consistent with relevant Commission and staff guidance. The No-Action Letter stated that the Division would not recommend enforcement action to the Commission under sections 2(a)(32), 5(a)(1), 17(a),

<sup>5</sup> The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). On October 29, 2012 the Trust filed with the Commission the most recent post-effective amendment to its registration statement under the Securities Act of 1933 (15 U.S.C. 77a) ("1933 Act") and under the 1940 Act relating to the Fund (File Nos. 333-155395 and 811-22250) (the "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").

<sup>6</sup> See No-Action Letter dated December 6, 2012 from Elizabeth G. Osterman, Associate Director, Office of Exemptive Applications, Division of Investment Management.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<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.

22(d), and 22(e) of the 1940 Act, or rule 22c-1 under the 1940 Act if actively-managed ETFs operating in reliance on specified orders (which include the Trust's Exemptive Order<sup>7</sup>) invest in options contracts, futures contracts or swap agreements provided that they comply with the representations stated in the No-Action Letter, as noted above.

In the Prior Release, the Exchange stated that, consistent with the Trust's Exemptive Order, the Fund would not invest in options contracts, futures contracts or swap agreements. In view of the No-Action Letter, the Exchange is proposing to change this representation to permit the Fund to use derivative instruments, as described below.<sup>8</sup>

The Prior Release stated that the Fund will invest under normal market circumstances at least 65% of its total assets in a diversified portfolio of Fixed Income Instruments of varying maturities.<sup>9</sup> "Fixed Income Instruments" include bonds, debt securities and other similar instruments issued by various U.S. and non-U.S. public- or private-sector entities.<sup>10</sup> The Exchange proposes to revise this statement to provide that the Fund will invest under normal market circumstances at least 65% of its total

<sup>7</sup> See note 5, *supra*.

<sup>8</sup> The Adviser represents that the Fund, in connection with its use of derivative instruments, will comply with the representations stated in the No-Action Letter, as noted above.

<sup>9</sup> As stated in the Prior Release, the term "under normal market 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>10</sup> As noted in the Prior Release, "Fixed Income Instruments," as such term is used generally in the Registration Statement, include: 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. Securities issued by U.S. Government agencies or government-sponsored enterprises may not be guaranteed by the U.S. Treasury.

assets in a diversified portfolio of Fixed Income Instruments of varying maturities, which may be represented by derivatives related to Fixed Income Instruments (the "65% policy").

The Prior Release stated that the Fund's investment would not be used to enhance leverage. In view of the Exchange's proposal to permit the Fund to use derivative instruments, as described below, the Fund's investments in derivative instruments may be used to enhance leverage. However, as noted in the Prior Release, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2x and 3times;s) of the Fund's broad-based securities market index.

#### The Fund's Use of Derivatives

With respect to the Fund, derivative instruments primarily will include forwards, exchange-traded and over-the-counter ("OTC") options contracts, exchange-traded futures contracts, options on futures contracts and swap agreements. Generally, derivatives are financial contracts whose value depends upon, or is derived from, the value of an underlying asset, reference rate or index, and may relate to stocks, bonds, interest rates, currencies or currency exchange rates, commodities, and related indexes. The Fund may, but is not required to, use derivative instruments for risk management purposes or as part of its investment strategies.<sup>11</sup>

Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. As described further below, the Fund will typically use derivative instruments as a substitute for taking a position in the underlying asset and/or as part of a strategy designed to reduce exposure to other risks, such as interest rate or currency risk. The Fund may also use derivative instruments to enhance returns. To limit the potential risk associated with such transactions, the Fund will segregate or "earmark" assets determined to be liquid by PIMCO in accordance with procedures established

<sup>11</sup> The Fund will seek, where possible, to use counterparties 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 broker-dealer, market levels for the counterparty's debt and equity, the counterparty's liquidity and its share of market participation.

by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.<sup>12</sup> Because the markets for certain securities, or the securities themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure.

The Adviser believes that derivatives can be an economically attractive substitute for an underlying physical security that the Fund would otherwise purchase. For example, the Fund could purchase Treasury futures contracts instead of physical Treasuries or could sell credit default protection on a corporate bond instead of buying a physical bond. Economic benefits include potentially lower transaction costs or attractive relative valuation of a derivative versus a physical bond (e.g., differences in yields).

The Adviser further believes that derivatives can be used as a more liquid means of adjusting portfolio duration as well as targeting specific areas of yield curve exposure, with potentially lower transaction costs than the underlying securities (e.g., interest rate swaps may have lower transaction costs than physical bonds). Similarly, money market futures can be used to gain exposure to short-term interest rates in order to express views on anticipated changes in central bank policy rates. In addition, derivatives can be used to protect client assets through selectively hedging downside (or "tail risks") in the Fund.

The Fund also can use derivatives to increase or decrease credit exposure. Index credit default swaps (CDX) can be used to gain exposure to a basket of credit risk by "selling protection" against default or other credit events, or to hedge broad market credit risk by "buying protection." Single name credit default swaps (CDS) can be used to

<sup>12</sup> To mitigate leveraging risk, the Adviser will segregate or "earmark" liquid assets or otherwise cover the transactions that may give rise to such risk.

allow the Fund to increase or decrease exposure to specific issuers, saving investor capital through lower trading costs. The Fund can use total return swap contracts to obtain the total return of a reference asset or index in exchange for paying a financing cost. A total return swap may be much more efficient than buying underlying securities of an index, potentially lowering transaction costs.

The Adviser believes that the use of derivatives will allow the Fund to selectively add diversifying sources of return from selling options. Option purchases and sales can also be used to hedge specific exposures in the portfolio, and can provide access to return streams available to long-term investors such as the persistent difference between implied and realized volatility. Option strategies can generate income or improve execution prices (*i.e.*, covered calls).

#### Other Investments

In addition to the Fund's use of derivatives in connection with the 65% policy, under the proposal the Fund would seek to invest in derivative instruments not based on Fixed Income Instruments, consistent with the Fund's investment restrictions relating to exposure to those asset classes.

The Prior Release also stated that the Fund may invest in debt securities and instruments that are economically tied to foreign (non-U.S.) countries. The Prior Release stated further that 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 applicable 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 Exchange proposes to add to this representation that, with respect to derivative instruments, as proposed to be used, PIMCO generally will consider such instruments to be economically tied to non-U.S. countries if the underlying assets are foreign currencies (or baskets or indexes of such currencies), or instruments or securities that are issued by foreign governments (or any political subdivision, agency, authority or instrumentality of such governments) or issuers organized under the laws of a non-U.S. country (or if the underlying assets are money market instruments, as applicable, if either the

issuer or the guarantor of such money market instruments is organized under the laws of a non-U.S. country).

The Fund's investments, including investments in derivative instruments, are subject to all of the restrictions under the 1940 Act, including restrictions with respect to illiquid securities. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser,<sup>13</sup> consistent with Commission guidance.<sup>14</sup> 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>15</sup>

The changes described herein will be effective upon (i) the effectiveness of an amendment to the Trust's Registration Statement disclosing the Fund's intended use of derivative instruments and (ii) when this proposed rule change has become operative. The Adviser represents that the Adviser has managed and will continue to manage the Fund

<sup>13</sup> In reaching liquidity decisions with respect to Rule 144A securities, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers willing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

<sup>14</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); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

<sup>15</sup> *See* note 14, *supra*.

in the manner described in the Prior Release, and will not implement the changes described herein until this proposed rule change is operative.

The Adviser represents that there is no change to the Fund's investment objective. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

Except for the changes noted above, all other facts presented and representations made in the Prior Release remain unchanged.

All terms referenced but not defined herein are defined in the Prior Release.

#### Derivatives Valuation Methodology for Purposes of Determining Net Asset Value

According to the Registration Statement, the net asset value ("NAV") of the Fund's Shares is 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 are valued as of the close of regular trading (normally 4:00 p.m., Eastern time ("E.T.")) (the "NYSE Close") on each day NYSE Arca is open ("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 portfolio asset 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 are 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 and non-exchange-traded derivatives 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 assets. 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. Exchange-traded options, futures and options on futures will generally be valued at the settlement price determined by the applicable exchange.

Derivatives for which market quotes are readily available will be valued at market value. Local closing prices will be used for all instrument valuation purposes.

For the Fund's 4:00 p.m. E.T. futures holdings, estimated prices from Reuters will be used if any cumulative futures margin impact is greater than \$0.005 to the NAV due to futures movement after the fixed income futures market closes (3:00 p.m. E.T.) and up to the NYSE Close (generally 4:00 p.m. E.T.). Swaps traded on exchanges such as the Chicago Mercantile Exchange ("CME") or the Intercontinental Exchange ("ICE-US") will use the applicable exchange closing price where available.

#### Derivatives Valuation Methodology for Purposes of Determining Intra-Day Indicative Value

On each Business Day, before commencement of trading in Fund Shares on NYSE Arca, the Fund discloses on its Web site the identities and quantities of the portfolio instruments and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

In order to provide additional information regarding the intra-day value of Shares of the Fund, the NYSE Arca or a market data vendor disseminates every 15 seconds through the facilities of the Consolidated Tape Association or other widely disseminated means an updated Intraday Indicative Value ("IIV") for the Fund as calculated by an information provider or market data vendor.

A third party market data provider is currently calculating the IIV for the Fund. For the purposes of determining the IIV, the third party market data provider's valuation of derivatives is expected to be similar to their valuation of all securities. The third party market data provider may use market quotes if available or may fair value securities against proxies (such as swap or yield curves).

With respect to specific derivatives:

- Foreign currency derivatives may be valued intraday using market quotes, or another proxy as determined to be appropriate by the third party market data provider.

- Futures may be valued intraday using the relevant futures exchange data, or another proxy as determined to be appropriate by the third party market data provider.

- Interest rate swaps may be mapped to a swap curve and valued intraday based on changes of the swap curve, or another proxy as determined to be

appropriate by the third party market data provider.

- CDX/CDS may be valued using intraday data from market vendors, or based on underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.

- Total return swaps may be valued intraday using the underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.

- Exchange listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.

- OTC options may be valued intraday through option valuation models (e.g., Black-Scholes) or using exchange traded options as a proxy, or another proxy as determined to be appropriate by the third party market data provider.

#### Disclosed Portfolio

The Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. This information will vary by line item, and may include tickers or other identifiers which would identify the listing or clearing exchange for exchange-traded and cleared derivatives, strike price(s), underlying asset, swap or index, coupon, effective date, maturity, and quantities or exposure. For example, a Treasury future would require only a ticker/identifier and quantity. An OTC option may require underlying asset or swap details, strike price, quantity and expiration date. For the avoidance of doubt, exchange-traded and cleared derivatives will be identified by ticker or other identifiers which would identify the listing or clearing exchange for those instruments.

#### Impact on Arbitrage Mechanism

The Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the

settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will typically be substituted with a "cash in lieu" amount when the Fund processes purchases or redemptions of creation units in-kind.

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>16</sup> 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 surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. 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.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange traded options, futures and options on futures with other markets or other entities that are members of the Intermarket Surveillance Group ("ISG"), and FINRA may obtain trading information regarding trading in the Shares, exchange traded options, futures and options on futures from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange traded options, futures and options on futures from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>17</sup> In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund

<sup>16</sup> FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

<sup>17</sup> For a list of the current members of ISG, see [www.isgportal.org](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.

reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

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

## 2. Statutory Basis

The basis under the Act<sup>18</sup> for this proposed rule change is the requirement under Section 6(b)(5)<sup>19</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 continue to be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

The Fund's investments will be consistent with the Fund's investment objective, which remains unchanged. The proposed amendments permitting the Fund to invest in derivative instruments, such as options contracts, futures contracts and swap agreements, promotes just and equitable principals of trade and furthers the protection of investors and the public interest. The Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2Xs and 3Xs) of the Fund's broad-based securities market index.

Permitting the use of derivatives will provide additional flexibility to the Adviser in seeking to achieve the Fund's investment objective. For example, because the markets for certain securities, or the securities themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure. Additionally, derivatives allow parties to replicate desired returns while eliminating the costs associated with acquiring or holding the underlying asset. As such, the increased flexibility afforded by the ability to use derivatives may enhance investor returns by facilitating the Fund's ability to more economically seek its investment objective, thereby reducing the costs—

actual, opportunity or otherwise—incurred by the Fund.

Investor protection and the public interest are further advanced as a result of the following factors:

(1) The Fund's compliance with the requirements of the federal securities laws, in particular, the restrictions under the 1940 Act regarding limitation on investments in illiquid securities, and diversification requirements set forth in Section 5(b)(1) [sic] 1940 Act;

(2) The central clearing of U.S. exchange-traded futures and options contracts;

(3) In the case of swaps, the Adviser represents that it has implemented detailed policies and procedures which govern the selection of counterparties to reduce the risks associated with swaps, including, but not limited to, counterparty risk and concentration risk.

(4) The Adviser represents that the Fund will comply with the representations stated in the No-Action Letter, as stated above. In addition, all other representations in the Prior Release remain as stated therein and no other changes are being made.

(5) Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objectives and policies. To limit the potential risk associated with transactions in derivative instruments, the Fund will segregate or "earmark" assets determined to be liquid by PIMCO in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act (or, as permitted by applicable regulation, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk.

(6) The listing and trading of Shares of the Fund is governed by Exchange initial and continued listing rules as approved by the Commission, including NYSE Arca Equities Rule 8.600.

(7) As described in the Prior Release under "Availability of Information", the Fund's Web site discloses specified quantitative information updated on a daily basis, as well as 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. On a daily basis, the Adviser discloses for each portfolio security or other financial instrument of the Fund the following

information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The Web site information is publicly available at no charge. In addition, price information for the debt securities held by the Fund is available through major market data vendors.

The proposed rule change helps to perfect the mechanism of a free and open market by enhancing investor choice and providing investors a cost effective and efficient means to access an asset class through a diversified vehicle that is listed and traded on an exchange.

### *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. The proposed rule change will allow the Fund to use derivative instruments as a more efficient substitute for taking a position in the underlying asset and/or as part of a strategy designed to reduce exposure to risks (such as interest rate or currency risk) or to enhance investment returns. The proposed change, therefore, will provide additional flexibility to the Adviser to seek the Fund's investment objective and will enhance the Fund's ability to compete with other actively managed exchange-traded funds and mutual funds.

### *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 up to 90 days after publication (i) as the Commission may designate 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

<sup>18</sup> 15 U.S.C. 78a.

<sup>19</sup> 15 U.S.C. 78f(b)(5).

(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-2013-122 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-2013-122. 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-NYSEArca-2013-122 and should be submitted on or before December 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-70903; File No. SR-MIAX-2013-52]**

### **Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Options Fee Schedule**

November 20, 2013.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 12, 2013, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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 is filing a proposal to amend the MIAX Options Fee Schedule (the "Fee Schedule").

The text of the proposed rule change is available on the Exchange's Web site at [http://www.miaxonions.com/filter/wotitle/rule\\_filing](http://www.miaxonions.com/filter/wotitle/rule_filing), at MIAX's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

the most significant aspects of such statements.

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

##### 1. Purpose

The Exchange proposes to amend the MIAX Options Fee Schedule (the "Fee Schedule") to offer additional Limited Service MEI Ports to Market Makers.

Currently, MIAX assesses monthly MEI Port Fees on Market Makers based upon the number of MIAX matching engines<sup>3</sup> used by the Market Maker. MEI Port users are allocated two Full Service MEI Ports<sup>4</sup> and two Limited Service MEI Ports<sup>5</sup> per matching engine to which they connect. The Exchange currently assesses a fee of \$1,000 per month on Market Makers for the first matching engine they use; \$500 per month for each of matching engines 2 through 5; and \$250 per month for each of matching engines 6 and above. For example, a Market Maker that wishes to make markets in just one symbol would require the two MEI Ports in a single matching engine; a Market Maker wishing to make markets in all symbols traded on MIAX would require the two MEI Ports in each of the Exchange's matching engines. The MEI Port includes access to MIAX's primary and secondary data centers and its disaster recovery center.

The Exchange recently added the Limited Service MEI Ports to enhance the MEI Port connectivity made available to Market Makers.<sup>6</sup> Limited Service MEI Ports have been well received by Market Makers thus far. The Exchange now proposes to make

<sup>3</sup> A "matching engine" is a part of the MIAX electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will be processed by one single matching engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines.

<sup>4</sup> Full Service MEI Ports provide Market Makers with the ability to send Market Maker quotes, eQuotes, and quote purge messages to the MIAX System. Full Service MEI Ports are also capable of receiving administrative information. Market Makers are limited to two Full Service MEI Ports per matching engine.

<sup>5</sup> Limited Service MEI Ports provide Market Makers with the ability to send eQuotes and quote purge messages only, but not Market Maker Quotes, to the MIAX System. Limited Service MEI Ports are also capable of receiving administrative information. Market Makers initially receive two Limited Service MEI Ports per matching engine.

<sup>6</sup> See Securities Exchange Act Release No. 70137 (August 8, 2013), 78 FR 49586 (August 14, 2013) (SR-MIAX-2013-39).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

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