

trade to a separate, stand-alone rule protects investors by eliminating confusion and making the provision more clear. Because options trades are used to hedge transactions in other markets, including securities and futures, many market participants would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. In addition, the Exchange believes it is in the nature of a fair and orderly market to allow for price adjustments rather than only cancellations because an adjustment would result in the least amount of disruption to the overall market. Further, the Exchange believes that, harmonizing its nullification and adjustment rules with other options markets would promote just and equitable principles of trade by better allowing the market participants to be treated similarly across exchanges. The Exchange also believes that the other administrative changes would remove impediments to and perfect the mechanism of a fair and orderly market as they are merely trying to create more transparency in the Exchange's rules. Finally, the Exchange does not believe that the proposed changes are unfairly discriminatory because they will be applied to all ATP Holders equally.

#### *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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any aspect of competition, whether between the Exchange and its competitors, or among market participants. Instead, the proposed rule change is designed to adopt the nullification and adjustment of trades on similar terms to that of other options exchanges.<sup>14</sup>

#### *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**

Because the foregoing proposed rule change does not: (i) Significantly affect

the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

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

### **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-NYSEMKT-2014-102 on the subject line.

#### *Paper Comments*

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEMKT-2014-102. 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 such 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-NYSEMKT-2014-102, and should be submitted on or before January 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2014-30441 Filed 12-29-14; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-73908; File No. SR-NYSEArca-2014-85]**

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of Shares of the PIMCO Low Duration Investment Grade Corporate Bond Active Exchange-Traded Fund Under NYSE Arca Equities Rule 8.600**

December 22, 2014.

### **I. Introduction**

On October 23, 2014, 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" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the PIMCO Low Duration Investment Grade Corporate Bond Active Exchange-Traded Fund ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on November 14, 2014.<sup>3</sup> The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

<sup>17</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.

<sup>3</sup> See Securities Exchange Act Release No. 73556 (Nov. 7, 2014), 79 FR 68330 ("Notice").

<sup>14</sup> See note 7 *supra*.

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

## II. Description of the Proposal

NYSE Arca proposes to list and trade Shares of the Fund under NYSE Arca Equities 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.<sup>4</sup> Pacific Investment Management Company LLC will be the investment manager to the Fund (“PIMCO” or “Adviser”),<sup>5</sup> and PIMCO Investments LLC will serve as the distributor for the Fund. State Street Bank & Trust Co. will serve as the custodian and transfer agent for the Fund.

The Exchange has made the following representations and statements in describing the Fund and its investment strategy, including other portfolio holdings and investment restrictions.<sup>6</sup>

<sup>4</sup> The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). The Exchange represents that, on June 17, 2014, the Trust filed an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (“1933 Act”) and the 1940 Act relating to the Fund (File Nos. 333-155395 and 811-22250) (“Registration Statement”). In addition, the Exchange represents that the Trust has obtained from the Commission certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 28993 (November 10, 2009) (File No. 812-13571).

<sup>5</sup> The Exchange represents that the Adviser is not registered as a broker-dealer, but is affiliated with a broker-dealer, and will implement a “fire wall” with respect to its broker-dealer affiliate regarding access to information concerning the composition or changes to the Fund’s portfolio. The Exchange further represents that, if PIMCO elects to hire a sub-adviser for the Fund that is registered as a broker-dealer or is affiliated with a broker-dealer, such sub-adviser will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate, as applicable, regarding access to information concerning the composition 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. In the event (a) the Adviser becomes registered as a broker-dealer or 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, the Adviser or any new adviser or sub-adviser, as the case may be, will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio.

<sup>6</sup> The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value (“NAV”), distributions, and taxes, among other things, can be found in the Notice and the Registration Statement, as applicable. *See* Notice and Registration Statement, *supra* notes 3 and 4, respectively.

### A. Principal Investments of the Fund

The Fund will seek to maximize total return, consistent with prudent investment management, by investing under normal circumstances<sup>7</sup> at least 80% of its assets in a diversified portfolio of investment grade corporate “Fixed Income Instruments” (as described in more detail below) of varying maturities, which may be represented by certain derivative instruments, as described in more detail below (“80% Policy”). Corporate Fixed Income Instruments will be: Corporate debt securities of U.S. and non-U.S. issuers, including convertible securities and corporate commercial paper;<sup>8</sup> inflation-indexed bonds;<sup>9</sup> bank capital securities;<sup>10</sup> trust preferred securities; and loan participations and assignments.<sup>11</sup>

The average portfolio duration of the Fund normally will vary from zero to 4 years based on PIMCO’s forecast for

<sup>7</sup> With respect to the Fund, 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>8</sup> The Exchange represents that, with respect to the Fund, while non-emerging markets corporate debt securities (excluding commercial paper) generally must have \$100 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 \$100 million or more par amount outstanding at the time of investment. *See also infra* note 30 (regarding emerging market corporate debt securities).

<sup>9</sup> Inflation-indexed bonds (other than municipal inflation-indexed bonds and certain corporate inflation-indexed bonds) are fixed income securities whose principal value is periodically adjusted according to the rate of inflation (e.g., Treasury Inflation Protected Securities). Municipal inflation-indexed securities are municipal bonds that pay coupons based on a fixed rate plus the Consumer Price Index for All Urban Consumers. With regard to municipal inflation-indexed bonds and certain corporate inflation-indexed bonds, the inflation adjustment is reflected in the semi-annual coupon payment.

<sup>10</sup> 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, under certain conditions, allow for the issuer bank to withhold payment of interest until a later date. However, such deferred interest payments generally earn interest.

<sup>11</sup> According to the Exchange, 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.

interest rates.<sup>12</sup> In furtherance of the Fund’s 80% Policy, or with respect to the Fund’s other investments, the Exchange represents that the Fund may invest in derivative instruments, subject to applicable law and any other restrictions described herein.

According to the Exchange, the Fund may purchase or sell securities on a when-issued, delayed delivery or forward commitment basis and may engage in short sales.<sup>13</sup> 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).<sup>14</sup>

In selecting investments for the Fund, PIMCO will develop an outlook for interest rates, currency exchange rates, and the economy; analyze credit and call risks; and use other investment selection techniques. The proportion of the Fund’s assets committed to 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.

According to the Exchange, in seeking to identify undervalued currencies, PIMCO may consider many factors, with respect to the Fund, 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 will identify these areas by grouping fixed income investments into sectors such as money markets, governments, corporates, mortgages, asset-backed, and international. Sophisticated proprietary software will then assist in evaluating sectors and pricing specific investments. Once investment opportunities are

<sup>12</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>13</sup> The Fund may make short sales of securities to offset potential declines in long positions in similar securities and increase the flexibility of the Fund, as well as for investment return, and as part of a risk arbitrage strategy.

<sup>14</sup> A dollar roll is similar except that the counterparty is not obligated to return the same securities as those originally sold by the Fund but only securities that are “substantially identical.”

identified, PIMCO will shift assets among sectors depending upon changes in relative valuations, credit spreads, and other factors.

*B. Other (Non-Principal) Investments of the Fund*

The Exchange represents that the non-principal investments listed below would consist of investments that are not included in the Fund's 80% Policy. Such assets may be invested in the Fixed Income Instruments and other instruments, as described below.

According to the Exchange, with respect to the Fund's investments, Fixed Income Instruments will include any one or more of the following: securities issued or guaranteed by the U.S. Government, its agencies or government-sponsored enterprises ("U.S. Government Securities"); mortgage-backed and other asset-backed securities;<sup>15</sup> structured notes, including hybrid or "indexed" securities and event-linked bonds;<sup>16</sup> 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; obligations of international agencies or supranational entities.

According to the Exchange, the Fund may gain exposure to the real estate sector by investing in over-the-counter

<sup>15</sup> According to the Exchange, mortgage-related and other asset-backed securities include collateralized mortgage obligations ("CMOs"), commercial mortgage-backed securities, mortgage dollar rolls, CMO residuals, stripped mortgage-backed securities, and other securities that directly or indirectly represent a participation in, or are secured by and payable from, mortgage loans on real property. A to-be-announced ("TBA") transaction is a method of trading mortgage-backed securities. In a TBA transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount, and price. The actual pools delivered generally are determined two days prior to the settlement date.

<sup>16</sup> The Exchange represents that the Fund may obtain event-linked exposure by investing in "event-linked bonds" or "event-linked swaps" or by implementing "event-linked strategies." Event-linked exposure results in gains or losses that typically are contingent, or formulaically related to defined trigger events, which include hurricanes, earthquakes, weather-related phenomena, or statistics relating to such events. Some event-linked bonds are commonly referred to as "catastrophe bonds." If a trigger event occurs, the Fund may lose a portion or its entire principal invested in the bond or notional amount on a swap.

("OTC") real estate-linked derivatives,<sup>17</sup> exchange-traded and OTC real estate investment trusts ("REITs"), and exchange traded common, exchange-traded and OTC preferred, and exchange-traded and OTC convertible securities of issuers in real estate-related industries.<sup>18</sup>

The Fund may invest in variable and floating rate securities that are not corporate Fixed Income Instruments. The Fund may invest in floaters and inverse floaters that are not corporate Fixed Income Instruments.

The Fund may invest in trade claims,<sup>19</sup> privately placed and unregistered securities, and exchange-traded and OTC-traded structured products,<sup>20</sup> including credit-linked securities<sup>21</sup> and commodity-linked notes. The Fund also may invest in Brady Bonds.

The Exchange represents that the Fund may enter into repurchase agreements on instruments other than corporate Fixed Income Instruments, in addition to repurchase agreements on corporate Fixed Income Instruments

<sup>17</sup> Real estate-linked derivatives are derivative instruments that are tied to real estate, such as derivatives (e.g., swaps or options) on real-estate related indices or specific real-estate related companies. The value and risks associated with real estate-linked derivative instruments are generally similar to those associated with direct ownership of real estate.

<sup>18</sup> See *infra* note 23 and accompanying text.

<sup>19</sup> Trade claims are non-securitized rights of payment arising from obligations that typically arise when vendors and suppliers extend credit to a company by offering payment terms for products and services. If the company files for bankruptcy, payments on these trade claims stop and the claims are subject to compromise along with the other debts of the company. Trade claims may be purchased directly from the creditor or through brokers.

<sup>20</sup> The Fund invest in structured products, including instruments such as credit-linked securities. For example, a structured product may combine a traditional stock, bond, or commodity with an option or forward contract. Generally, the principal amount, amount payable upon maturity or redemption, or interest rate of a structured product is tied (positively or negatively) to the price of some commodity, currency, or securities index or another interest rate or some other economic factor. The interest rate or (unlike most fixed income securities) the principal amount payable at maturity of a structured product may be increased or decreased, depending on changes in the value of the benchmark. An example of exchange-traded structured products would be exchange-traded notes or ETNs, such as those listed and traded under NYSE Arca Equities Rule 5.2(j)(6).

<sup>21</sup> Credit-linked securities are generally a basket of derivative instruments, such as credit default swaps or interest rate swaps. Like an investment in a bond, investments in credit-linked securities represent the right to receive periodic income payments (in the form of distributions) and payment of principal at the end of the term of the security. However, these payments are conditioned on the trust's receipt of payments from, and the trust's potential obligations to, the counterparties to the derivative instruments and other securities in which the trust invests.

mentioned above, in which the Fund purchases a security from a bank or broker-dealer, which agrees to purchase the security at the Fund's cost plus interest within a specified time.

Repurchase agreements maturing in more than seven days and which may not be terminated within seven days at approximately the amount at which the Fund has valued the agreements will be considered illiquid securities. The Fund may enter into reverse repurchase agreements on instruments other than corporate Fixed Income Instruments, in addition to reverse repurchase agreements on corporate Fixed Income Instruments mentioned above, subject to the Fund's limitations on borrowings.<sup>22</sup> The Fund will segregate or "earmark" assets determined to be liquid by PIMCO in accordance with procedures established by the Board to cover its obligations under reverse repurchase agreements.

The Exchange represents that the Fund may invest only up to 10% of its total assets in preferred stocks, convertible securities, common stocks, and other equity-related securities, and that this limitation will not include real estate-related investments, such as REITs or investments in common, preferred, or convertible securities of issuers in real estate-related industries.<sup>23</sup>

The Exchange represents that the Fund may invest up to 20% of its total assets in structured notes, including hybrid or "indexed" securities and

<sup>22</sup> With respect to the Fund, a reverse repurchase agreement involves the sale of a security by the Fund and its agreement to repurchase the instrument at a specified time and price.

<sup>23</sup> Convertible securities are generally preferred stocks and other securities (including fixed income securities and warrants) that are convertible into or exercisable for common stock at a stated price or rate. Equity-related investments may include investments in small-capitalization ("small-cap"), mid-capitalization ("mid-cap") and large-capitalization ("large-cap") companies. According to the Exchange, with respect to the Fund, a small-cap company will be defined as a company with a market capitalization of up to \$1.5 billion, a mid-cap company will be defined as a company with a market capitalization of between \$1.5 billion and \$10 billion and a large-cap company will be defined as a company with a market capitalization above \$10 billion. Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities, including stocks into which a convertible security is converted, whose principal market is not a member of the Intermarket Surveillance Group ("ISG") or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement ("CSSA"). Furthermore, not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a CSSA.

event-linked bonds. Additionally, the Fund may invest up to 15% of its total assets in high yield securities (“junk bonds”) rated below BBB – (with a minimum level of B – at purchase) by Standard & Poor’s Ratings Services (“S&P”), or equivalently rated by Moody’s Investors Service, Inc. (“Moody’s”) or Fitch, Inc. (“Fitch”), or, if unrated, determined by PIMCO to be of comparable quality (except that within such limitation, the Fund may invest in mortgage-related securities rated below B –).<sup>24</sup>

#### C. Investments in Derivative Instruments

With respect to the Fund, the Exchange represents that derivative instruments will include forwards;<sup>25</sup> exchange-traded and OTC options contracts; exchange-traded futures contracts; exchange-traded and OTC swap agreements; exchange-traded options on futures contracts; and OTC options on swap agreements.<sup>26</sup> The Fund may, but is not required to, use derivative instruments for risk management purposes or as part of its investment strategies.<sup>27</sup>

<sup>24</sup> With respect to the Fund, 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 securities may be less liquid than comparable rated securities and involve the risk that the Fund’s 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. In determining whether a security is of comparable quality, the Adviser will consider, for example, whether the issuer of the security has issued other rated securities; whether the obligations under the security are guaranteed by another entity and the rating of such guarantor (if any); whether and (if applicable) how the security is collateralized; other forms of credit enhancement (if any); the security’s maturity date; liquidity features (if any); relevant cash flow(s); valuation features; other structural analysis; macroeconomic analysis; and sector or industry analysis.

<sup>25</sup> Forwards are contracts to purchase or sell securities for a fixed price at a future date beyond normal settlement time (forward commitments).

<sup>26</sup> The Exchange represents that in the future, in the event that there are exchange-traded options on swaps, the Fund may invest in these instruments.

<sup>27</sup> According to the Exchange, 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.

According to the Exchange, the Fund will typically use derivative instruments as a substitute for taking a position in the underlying asset and 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 by the Trust’s Board of Trustees (“Board”) 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. In addition, the Exchange represents that 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>28</sup> According to the Exchange, 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 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.

#### D. Investment Restrictions

According to the Exchange, if PIMCO believes that economic or market conditions are unfavorable to investors or that market conditions are not normal, 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. As noted

<sup>28</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.

above, the Fund may invest without limit, for temporary or defensive purposes, in such instruments if PIMCO deems it appropriate to do so.

The Exchange represents that 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 its 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.

The Exchange represents that the Fund may invest up to 20% of its total assets in mortgage-related and other asset backed securities, although this 20% limitation will not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored

instrumentalities. The Fund may invest up to 20% of its total assets in securities denominated in foreign currencies, and may invest beyond this limit in U.S. dollar denominated securities of foreign issuers. The Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 10% of its total assets.<sup>29</sup> The Fund may engage in foreign currency transactions either on a spot (cash) basis at the rate prevailing in the currency exchange market at the time or through forward currency contracts. The Exchange represents that the Fund may invest up to 20% of its total assets in securities and instruments of issuers economically tied to emerging market countries.<sup>30</sup>

<sup>29</sup> The Exchange represents that 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 currencies, see [www.bis.org](http://www.bis.org).

<sup>30</sup> According to the Exchange, PIMCO will generally consider an instrument to be economically tied to an emerging market country if the security’s “country of exposure” is an emerging market country, as determined by the criteria set forth in the Registration Statement. Alternatively, such as when a “country of exposure” is not available or when PIMCO believes the following tests more accurately reflect which country the security is economically tied to, PIMCO may consider an instrument to be economically tied to an emerging market country if the issuer or guarantor is a government of an emerging market

The Exchange represents that the Fund's investments, including investments in derivative instruments, will be subject to all of the restrictions under the 1940 Act, including restrictions with respect to illiquid assets. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance.<sup>31</sup> The Exchange represents that the Fund will monitor its respective 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 assets. Illiquid assets 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.

The Exchange represents that the Fund will be diversified within the meaning of the 1940 Act. In addition, the Fund intends to qualify annually and elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code. The Fund will not concentrate its investments in a particular industry, as that term is used in the 1940 Act, and as interpreted, modified, or otherwise

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 of the security is a currency of an emerging market country. With respect to derivative instruments, PIMCO will generally consider such instruments to be economically tied to emerging market countries if the underlying assets are currencies of emerging market countries (or baskets or indices of such currencies), or instruments or securities that are issued or guaranteed by governments of emerging market countries or by entities organized under the laws of emerging market countries. While emerging markets corporate debt securities (excluding commercial paper) 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 at the time of investment.

<sup>31</sup> According to the Exchange, in reaching liquidity decisions, 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).

permitted by a regulatory authority having jurisdiction from time to time.

The Exchange further represents that the Fund's investments, including derivatives, will be consistent with the Fund's investment objective and the Fund's use of derivatives may be used to enhance leverage. However, 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).

### III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>32</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,<sup>33</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,<sup>34</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. 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 of the Fund, 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>35</sup> On each business day, before commencement of trading in Shares in

<sup>32</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>33</sup> 15 U.S.C. 78f(b)(5).

<sup>34</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>35</sup> The Exchange states that several major market data vendors display or make widely available Portfolio Indicative Values taken from the CTA or other data feeds.

the Core Trading Session 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>36</sup> In addition, a basket composition file, which includes the security names and share quantities (as applicable) required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the National Securities Clearing Corporation. The NAV of the Fund's Shares will normally be determined as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m. Eastern time) on each business day.<sup>37</sup> Information regarding market

<sup>36</sup> On a daily basis, the Fund will disclose the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

<sup>37</sup> The NAV per Share of the Fund 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. According to the Exchange, portfolio securities and other assets for which market quotes are readily available will be valued at market value. Market value will generally be 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. Fixed Income Instruments, including those to be purchased under firm commitment agreements/delayed delivery basis, will generally be valued on the basis of quotes obtained from brokers and dealers or independent pricing services. Domestic and foreign fixed income securities will generally 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. Short-term debt instruments having a remaining maturity of 60 days or less will generally be valued at amortized cost. Derivatives will generally 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. Local closing prices will be used for all instrument valuation purposes. Foreign currency-denominated derivatives will generally be valued as of the respective local region's market close. With respect to specific derivatives: Currency spot and forward rates from major market data vendors will generally be determined as of the NYSE Close; exchange-traded futures will generally be valued at the settlement price of the relevant exchange; a total return swap on an index will be valued at the publicly available index price; equity total return swaps will generally be valued using the actual underlying equity at local market closing, while

Continued

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.

Intra-day and closing price information regarding exchange-traded equity securities, including common stocks, preferred stocks, securities convertible into stocks, closed-end funds, exchange-traded funds, exchange-traded structured products (including ETNs), exchange-traded REITs, and other equity-related securities, will be available from the exchange on which such securities are traded. Intra-day and closing price information regarding exchange-traded options (including options on futures) and futures will be available from the exchange on which such instruments are traded. Intra-day and closing price information regarding Fixed Income Instruments and other forms of debt securities also will be available from major market data vendors. Pricing information relating to forwards, spot currency, OTC options and swaps will be available from major market data vendors. Pricing information regarding money market instruments, OTC REITs,

bank loan total return swaps will generally be valued using the evaluated underlying bank loan price minus the strike price of the loan; exchange-traded non-equity options, index options, and options on futures will generally be valued at the official settlement price determined by the relevant exchange, if available; OTC and exchange-traded equity options will generally be valued on a basis of quotes obtained from a quotation reporting system, established market makers, or pricing services; or at the settlement price of the applicable exchange; OTC FX options will generally be valued by pricing vendors; all other swaps such as interest rate swaps, inflation swaps, swaptions, credit default swaps, and CDX/CDS will generally be valued by pricing services. Investment company securities that are not exchange-traded will be valued at NAV. Equity securities traded OTC will be valued based on price quotations obtained from a broker-dealer who makes markets in such securities or other equivalent indications of value provided by a third-party pricing service. Money market instruments, trade claims, OTC REITs, privately placed and unregistered securities, OTC structured products, OTC real-estate linked derivatives, credit-linked securities, commodity-linked notes, Brady Bonds, variable and floating rate securities that are not corporate Fixed Income Instruments; floaters and inverse floaters that are not corporate Fixed Income Instruments and other types of debt securities will generally be valued on the basis of independent pricing services or quotes obtained from brokers and dealers. Securities and other assets for which market quotes are not readily available will be valued at fair value as determined in good faith by the Board or persons acting at their direction. The Board has adopted methods for valuing securities and other assets in circumstances where market quotes are not readily available, and has delegated to PIMCO the responsibility for applying the valuation methods.

private activity bonds, trade claims, privately placed and unregistered securities, OTC real estate-linked derivatives, OTC structured products, credit-linked securities, commodity-linked notes, Brady Bonds, variable and floating rate securities that are not corporate Fixed Income Instruments and floaters and inverse floaters that are not corporate Fixed Income Instruments will be available from major market data vendors. Pricing information regarding other investment company securities will be available from on-line information services and from the Web site for the applicable investment company security. Exchange-traded options quotation and last-sale information for options cleared via the Options Clearing Corporation is available via the Options Price Reporting Authority. Pricing information relating to equity securities traded OTC will be available from major market data vendors. 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.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares of the Fund 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. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. In addition, trading in the Shares of the Fund may be halted because of other market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.<sup>38</sup> Trading in the Shares also will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which trading in Shares of the Fund may be halted.

The Exchange represents that it has a general policy prohibiting the distribution of material, non-public

information by its employees. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Fund's "Reporting Authority" must 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 the Adviser is not registered as a broker-dealer, but is affiliated with a broker-dealer, and will implement a "fire wall" with respect to such broker-dealer affiliate regarding access to information concerning the composition or changes to the Fund's portfolio.<sup>39</sup> Prior to the commencement of trading, the Exchange states that it will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. The Exchange further 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>40</sup>

The Exchange represents that it deems the Shares to be equity securities, thus rendering the trading of the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

<sup>38</sup> See *supra* note 5. The Exchange states that 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 Sub-Adviser and their 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>40</sup> The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

<sup>38</sup> These reasons may include: (1) The extent to which trading is not occurring in the securities and 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. 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.

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and 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 federal securities laws applicable to trading on the Exchange.

(4) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the exchange-traded options, exchange-traded equities (including common stocks, exchange-traded investment companies, exchange-traded convertibles and preferred securities, exchange-traded REITs, and exchange-traded structured products, including ETNs), futures, and options on futures with other markets or other entities that are members of the ISG, and FINRA may obtain trading information regarding trading in the Shares, exchange-traded options, exchange-traded equities, 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, exchange-traded equities, futures, and options on futures from markets or other entities that are members of ISG or with which the Exchange has in place a CSSA.<sup>41</sup> The Exchange states that FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund that is reported to FINRA's Trade Reporting and Compliance Engine, and that FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

(5) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for

urchases and redemptions of Shares in creation unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) 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; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(6) For initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Exchange Act,<sup>42</sup> as provided by NYSE Arca Equities Rule 5.3.

(7) 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).

(8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A Securities deemed illiquid by the Advisor or Sub-Advisor, in accordance with Commission guidance.

(9) The Fund will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced. 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.

(10) The Fund may invest only up to 10% of its total assets in preferred stocks, convertible securities, common stocks, and other equity-related securities; such limit will not include real-estate related investments, such as REITs or investments in common, preferred, or convertible securities of issuers in real estate-related industries.

(11) Not more than 10% of the net assets of the Fund in the aggregate

invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities, including stocks into which a convertible security is converted, whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA.

(12) Not more than 10% of the net assets of the Fund in the aggregate invested in futures contracts or exchange-traded options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a CSSA.

(13) The Fund shall invest at least 80% of its assets in corporate debt securities of U.S. and non-U.S. issuers (which may be represented by certain derivatives), including convertible securities and corporate commercial paper; inflation-indexed bonds; bank capital securities; trust preferred securities; and loan participations and assignments.

(14) The Fund may invest up to 20% of its total assets in mortgage-related and other asset backed securities (not including securities issued or guaranteed by Federal agencies and U.S. government sponsored instrumentalities).

(15) The Fund may invest up to 20% of its total assets in structured notes, including hybrid or "indexed" securities and event-linked bonds.

(16) The Fund may invest up to 15% of its total assets in high yield securities rated below BBB- (with a minimum level of B- at purchase) by S&P, or equivalently rated by Moody's or Fitch, or, if unrated, determined by PIMCO to be of comparable quality (except that within such limitation, the Fund may invest in mortgage-related securities rated below B-).

(17) The Fund may invest up to 20% of its total assets in securities and instruments of issuers economically tied to emerging market countries.

(18) While non-emerging markets corporate debt securities (excluding commercial paper) generally must have \$100 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 \$100 million or more par amount outstanding at the time of investment. In addition, while emerging markets corporate debt securities (excluding commercial paper) generally must have \$200 million or more par amount outstanding and significant par value traded to be considered as an

<sup>41</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 CSSA.

<sup>42</sup> 17 CFR 240.10A-3.

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 at the time of investment.

(19) To mitigate leveraging risk as result of certain transactions of the Fund, including transactions in derivative instruments, the Adviser will segregate or “earmark” liquid assets or otherwise cover the transactions that may give rise to such risk.

(20) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange’s representations, including those set forth above and in the Notice, and the Exchange’s description of the Fund. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>43</sup> 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>44</sup> that the proposed rule change (SR-NYSEArca-2014-85) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>45</sup>

**Brent J. Fields,**

Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73912; File No. SR-NASDAQ-2014-102]

#### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Require That a Company Publicly Disclose the Denial of a Listing Application

December 22, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>43</sup> 15 U.S.C. 78f(b)(5).

<sup>44</sup> 15 U.S.C. 78s(b)(2).

<sup>45</sup> 17 CFR 200.30-3(a)(12).

(“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 11, 2014, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 require that companies publicly disclose the denial of a listing application.

The text of the proposed rule change is below; proposed new language is in italics. There are no proposed deletions.

\* \* \* \* \*

#### 5205. The Applications and Qualifications Process

(a)—(h) No change.

(i) (1) *A Company may withdraw its application for initial listing at any time.*

(2) *A Company that receives a written determination denying its application for listing must, within four business days, make a public announcement in a press release or other Regulation FD compliant manner about the receipt of the determination and the Rule(s) upon which the determination is based, describing each specific basis and concern identified by Nasdaq in reaching its determination. If the public announcement is not made by the Company within the time allotted or does not include all of the required information, Nasdaq will make a public announcement with the required information and, if the Company appeals the determination as set forth in Rule 5815, the Hearings Panel will consider the Company’s failure to make the public announcement in considering whether to list the Company.*

\* \* \* \* \*

#### 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

Nasdaq processes between 200 and 300 applications each year from companies seeking to list securities on Nasdaq. While most applicants meet the listing requirements, or are prepared to take action to meet those requirements before listing, in some cases a company does not meet the requirements and is not willing, or able, to comply. In other, rare instances, Nasdaq may determine to deny an application based on public interest concerns even though the company meets all initial listing requirements.<sup>3</sup> In either of these cases, the company is informed of the outcome and can withdraw its application before the application is formally denied.<sup>4</sup> If the company does not withdraw the application, the Nasdaq Listing Qualifications Department will issue a written denial, which the company can appeal to a Listing Qualifications Hearings Panel.<sup>5</sup>

The procedures for such an appeal are similar to an appeal from a delisting determination. However, while the rules provide transparency to a delisting event by requiring the company to disclose a delisting determination, there is no comparable requirement for disclosure of an initial listing denial.

Just as a delisting determination may be considered a material event to the investing public, Nasdaq believes that a denial of initial listing is equally so, particularly in the context of a company that previously publicly announced its intention to seek a listing, which is often the case. Investors view such an announcement to list as a positive development and such announcements often attract investor interest. Nasdaq believes that the public is therefore equally interested in the outcome of such an application and proposes to adopt a rule that would require a listing applicant that has been denied listing to publicly disclose the receipt of the determination and the circumstances on

<sup>3</sup> See Listing Rule 5101 and IM-5101-1.

<sup>4</sup> While Nasdaq has always allowed a company to withdraw its application at any time, the proposed rule change will add this to the rules.

<sup>5</sup> Listing Rule 5815(a)(1). A Company that has appealed a written denial may also withdraw its application (and appeal) while the appeal is pending.

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

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