

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72867; File No. SR-NYSEArca-2014-56)

August 19, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change Relating to Listing and Trading of Shares of the PIMCO Income Exchange-Traded Fund under NYSE Arca Equities Rule 8.600

On May 1, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the PIMCO Income Exchange-Traded Fund (“Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on May 21, 2014.³ On June 24, 2014, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁴ The Commission received no comments on the proposed rule change. This Order institutes proceedings under Section 19(b)(2)(B) of the Act⁵ to determine whether to approve or disapprove the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 72170 (May 15, 2014), 79 FR 29231 (“Notice”).

⁴ See Securities Exchange Act Release No. 72458, 79 FR 36849 (June 30, 2014). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission designated August 19, 2014 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁵ 15 U.S.C. 78s(b)(2)(B).

I. Description of the Proposal

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by PIMCO ETF Trust (“Trust”), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.⁶

The investment manager to the Fund will be Pacific Investment Management Company LLC (“PIMCO” or “Adviser”). 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 represents that, while the Adviser is not registered as a broker-dealer, the Adviser 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 and changes to the portfolio.⁷

The Exchange has made the following representations and statements describing the

⁶ The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). According to the Exchange, on January 27, 2014, the Trust filed an amendment to its registration statement on Form N-1A under the Securities Act of 1933 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 certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 28993 (November 10, 2009) (File No. 812-13571).

⁷ See Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that 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, such Adviser, new adviser, or new 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 and 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.

Fund and its investment strategy, including portfolio holdings and investment restrictions.⁸

Characteristics of the Fund

In selecting investments for the Fund, PIMCO will develop an outlook for interest rates, currency exchange rates, and the economy, will analyze credit and call risks, and will use other investment selection techniques. The proportion of the Fund's assets committed to investment in securities with particular characteristics (such as quality, sector, interest rate, or maturity) will vary based on PIMCO's outlook for the U.S. economy and the economies of other countries in the world, the financial markets, and other factors.

In seeking to identify undervalued currencies, PIMCO may consider many factors, including, but not limited to, longer-term analysis of relative interest rates, inflation rates, real exchange rates, purchasing power parity, trade account balances, and current account balances, as well as other factors that influence exchange rates such as flows, market technical trends, and government policies. With respect to fixed income investing, PIMCO will attempt to identify areas of the bond market that are undervalued relative to the rest of the market. PIMCO 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 identified, PIMCO will shift assets among sectors depending upon changes in relative valuations, credit spreads, and other factors.

⁸ Additional information regarding the Trust, the Fund, and the Shares, investment strategies, investment restrictions, risks, net asset value ("NAV") calculation, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions, and taxes, among other information, is included in the Notice and the Registration Statement, as applicable. See Notice and Registration Statement, supra notes 3 and 6, respectively.

Fixed Income Instruments

Among other investments described in more detail herein, the Fund may invest in Fixed Income Instruments, which include:

- securities issued or guaranteed by the U.S. Government, its agencies or government-sponsored enterprises;
- corporate debt securities of U.S. and non-U.S. issuers, including convertible securities and corporate commercial paper;⁹
- mortgage-backed and other asset-backed securities;¹⁰
- inflation-indexed bonds issued both by governments and corporations;¹¹
- structured notes, including hybrid or “indexed” securities and event-linked bonds;¹²

⁹ 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 (aggregated by issuer or group of related issuers) at the time of investment. See also infra note 21.

¹⁰ 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.

¹¹ 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 (TIPS)). Municipal inflation-indexed securities are municipal bonds that pay coupons based on a fixed rate, plus the Consumer Price Index for All Urban Consumers (CPI). With regard to municipal inflation-indexed bonds and certain corporate inflation-indexed bonds, the inflation adjustment is reflected in the semi-annual coupon payment.

¹² The Fund may obtain event-linked exposure by investing in “event-linked bonds” or

- bank capital and trust preferred securities;¹³
- loan participations and assignments;¹⁴
- 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 ("Municipal Bonds");
- obligations of non-U.S. governments or their subdivisions, agencies, and government-sponsored enterprises; and
- obligations of international agencies or supranational entities.

Use of Derivatives by the Fund

The Fund's investments in derivative instruments will be made in accordance with the

"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. Examples of trigger events 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.

¹³ There are two common types of bank capital: Tier I and Tier II. Bank capital is generally, but not always, of investment grade quality. According to the Exchange, Tier I securities often take the form of trust preferred securities. Tier II securities are commonly thought of as hybrids of debt and preferred stock, 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.

¹⁴ 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.

1940 Act and consistent with the Fund’s investment objective and policies. With respect to the Fund, derivative instruments primarily will include forwards,¹⁵ exchange-traded and over-the-counter options contracts, exchange-traded futures contracts, swap agreements, and options on futures contracts and swap agreements. Generally, derivatives are financial contracts, the values of which depend upon, or are 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.

According to the Exchange, 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 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. 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

¹⁵ Forwards are contracts to purchase or sell securities for a fixed price at a future date beyond normal settlement time (forward commitments).

it had not been leveraged.¹⁶ 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 Exchange states 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 Exchange further states 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 allow the Fund to increase

¹⁶ To mitigate leveraging risk, the Adviser will segregate or “ earmark ” liquid assets or otherwise cover the transactions that may give rise to such risk.

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.¹⁷

The Exchange states 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).

Principal Investments of the Fund

The Fund will seek to maximize current income, and long-term capital appreciation will be a secondary objective. The Fund will seek to maintain a high and consistent level of dividend income by investing in a broad array of fixed income sectors and utilizing income efficient implementation strategies. The capital appreciation sought by the Fund generally will arise from decreases in interest rates or improving credit fundamentals for a particular sector or security.

The Fund will seek to achieve its investment objective by investing, under normal

¹⁷ 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 has adopted procedures that are consistent with Section 18 of the 1940 Act and related Commission guidance, which require that a fund's derivative instruments be fully collateralized by liquid assets of the fund.

circumstances,¹⁸ at least 65% of its total assets in a multi-sector portfolio of Fixed Income Instruments of varying maturities, which may be represented by derivatives based on Fixed Income Instruments (“65% policy”). The average portfolio duration¹⁹ of the Fund normally will vary from zero to eight years based on PIMCO’s forecast for interest rates.

The Fund will generally allocate its assets among several investment sectors, without limitation, which may include: (i) high yield securities (“junk bonds”) and investment grade corporate bonds of issuers located in the United States and non-U.S. countries, including emerging market countries; (ii) fixed income securities issued by the U.S. and non-U.S. governments (including emerging market governments), their agencies, and instrumentalities; (iii) mortgage-related and other asset backed securities; and (iv) foreign currencies, including those of emerging market countries. The Fund, however, will not be required to gain exposure to any one investment sector, and the Fund’s exposure to any one investment sector will vary over time.

The Fund may invest up to 50% of its total assets in high yield securities rated below investment grade, but rated at least Caa by Moody’s Investors Service, Inc. (“Moody’s”), or equivalently rated by Standard & Poor’s Ratings Services (“S&P”) or Fitch, Inc. (“Fitch”), or if

¹⁸ 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 a systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

¹⁹ 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.

unrated, determined by PIMCO to be of comparable quality²⁰ (except such limitation shall not apply to the Fund's investments in mortgage- and asset-backed securities).

The Fund may invest up to 20% of its total assets in securities and instruments that are economically tied to emerging market countries.²¹

²⁰ 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 that 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.

²¹ 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 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 (aggregated by issuer or group of related issuers) of such securities held by the Fund must have \$200 million or more par amount outstanding at the time of investment.

The Fund may invest in securities and instruments that are economically tied to foreign (non-U.S.) countries.²² The Fund may invest, without limitation, in securities denominated in foreign currencies. The Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 10% of its total assets.

In furtherance of the 65% policy, or with respect to the Fund's other investments, the Fund may invest in derivative instruments, subject to applicable law and any other restrictions described herein.

The Fund may invest up to 25% of its assets in mortgage-related and other asset-backed securities, although this 25% limitation does not apply to securities issued or guaranteed by Federal agencies and/or U.S. government sponsored instrumentalities.

The Fund may engage in foreign currency transactions on a spot (cash) basis and forward

PIMCO will have broad discretion to identify countries that it would consider to qualify as emerging markets. In making investments in emerging market securities, the Fund will emphasize those countries with relatively low gross national product per capita and with the potential for rapid economic growth. Emerging market countries are generally located in Asia, Africa, the Middle East, Latin America, and Eastern Europe. PIMCO will select the country and currency composition based on its evaluation of relative interest rates, inflation rates, exchange rates, monetary and fiscal policies, trade and current account balances, legal and political developments, and any other specific factors it believes to be relevant.

²² PIMCO will generally consider an instrument to be economically tied to a non-U.S. country if the issuer is a foreign government (or any political subdivision, agency, authority, or instrumentality of such government), or if the issuer is organized under the laws of a non-U.S. country. In the case of certain money market instruments, such instruments will be considered economically tied to a non-U.S. country if either the issuer or the guarantor of such money market instrument is organized under the laws of a non-U.S. country. With respect to derivative instruments, PIMCO will generally 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 issuers organized under the laws of a non-U.S. country (or if the underlying assets are certain money market instruments, if either the issuer or the guarantor of such money market instruments is organized under the laws of a non-U.S. country).

basis and invest in foreign currency futures and options contracts. The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency, or to shift exposure to foreign currency fluctuations from one currency to another. Suitable hedging transactions may not be available in all circumstances, and there can be no assurance that the Fund will engage in such transactions at any given time or from time to time.

The Fund may, 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).

Other (Non-Principal) Investments of the Fund

The Fund may invest up to 10% of its total assets in preferred stocks, convertible securities, and other equity-related securities.²³

The Fund may invest in variable and floating rate securities, which are securities that pay interest at rates that adjust whenever a specified interest rate changes and/or that reset on predetermined dates (such as the last day of a month or calendar quarter). The Fund may invest in floating rate debt instruments (floaters) and inverse floating rate debt instruments (inverse

²³ 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. 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 shall consist of non-U.S. equity securities, including non-U.S. stocks into which a convertible security is converted, whose principal market is not a member of the Intermarket Surveillance Group or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

floaters) and may engage in credit spread trades.

The Fund may also invest in trade claims,²⁴ privately placed and unregistered securities, and structured products, including credit-linked securities, commodity-linked notes, and structured notes. The Fund may invest in Brady Bonds, which are securities created through the exchange of existing commercial bank loans to sovereign entities for new obligations in connection with a debt restructuring.

The Fund may purchase or sell securities which the Fund is eligible to purchase or sell on a when-issued basis, may purchase and sell such securities for delayed delivery, and may make contracts to purchase or sell such securities for a fixed price at a future date beyond normal settlement time (forward commitments). The Fund may make short sales as part of its overall portfolio management strategies or to offset a potential decline in value of a security.

The Fund may enter into repurchase agreements, 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 and dollar rolls subject to the Fund's limitations on borrowings.²⁵

²⁴ 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.

²⁵ 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. 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.

Reverse repurchase agreements and dollar rolls may be considered borrowing for some purposes. 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 and dollar rolls.

The Fund may invest, without limit, for temporary or defensive purposes, in U.S. debt securities, including taxable securities and short-term money market securities, if PIMCO deems it appropriate to do so. If PIMCO believes that economic or market conditions are unfavorable to investors, the Fund may temporarily invest up to 100% of its assets in certain defensive strategies, including holding a substantial portion of its 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.

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

Investment Restrictions

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 investments in illiquid securities, that is, the limitation that a 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, in accordance with Commission guidance.²⁶ 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.

The Fund is non-diversified, which means that it may invest its assets in a smaller number of issuers than a diversified fund, will include a minimum of 13 non-affiliated issuers, and intends to qualify annually and elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code. In addition, 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 permitted by regulatory authority having jurisdiction from time to time. 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-

²⁶ 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).

1A).²⁷

The Exchange represents that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Fund's Reporting Authority will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Fund's portfolio. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Act,²⁸ as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio (as defined in NYSE Arca Equities Rule 8.600) will be made available to all market participants at the same time.

II. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2014-56 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act²⁹ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below,

²⁷ The Exchange states that the Fund's broad-based securities market index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

²⁸ 17 CFR 240.10A-3.

²⁹ 15 U.S.C. 78s(b)(2)(B).

the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,³⁰ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,” and “to protect investors and the public interest.”³¹

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the information described in the Notice,³² as summarized above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.³³

³⁰ Id.

³¹ 15 U.S.C. 78f(b)(5).

³² See supra note 3.

³³ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2014-56 on the subject line.

Paper comments:

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

All submissions should refer to File Numbers SR-NYSEArca-2014-56. This file number should be included on the subject line if e-mail 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 website (<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

for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website 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 these filings 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-2014-56 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

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

Kevin M. O'Neill
Deputy Secretary

³⁴ 17 CFR 200.30-3(a)(57).