

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67215; File No. TP 11-07)

June 19, 2012

Order Granting a Limited Exemption from Exchange Act Rule 10b-17 to Certain Actively Managed Exchange-Traded Funds Pursuant to Exchange Act Rule 10b-17(b)(2)

By letter dated June 19, 2012 (“letter”), as supplemented by conversations with the staff of the Division of Trading and Markets (“Staff”), counsel for PIMCO ETF Trust (“Trust”) requested on behalf of the Trust and PIMCO Global Advantage Inflation-Linked Bond Strategy Fund (“Fund”) that the Securities and Exchange Commission (“Commission”) issue an exemption from Rule 10b-17 under the Securities Exchange Act of 1934, as amended (“Exchange Act”). Specifically, the letter requests that the Commission exempt issuers of actively managed exchange-traded funds (“ETFs”) such as the Trust from the requirements of Exchange Act Rule 10b-17(b)(1)(v)(a) and (b) subject to certain conditions. The request is similar to a number of requests from issuers of actively managed ETFs for conditional exemptive relief from Rule 10b-17 that were granted pursuant to delegated authority (“prior requests”).<sup>1</sup>

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give timely notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b-17(b). In particular, Rule 10b-17(b)(1)(v)(a) requires that the issuer provide notice, for a dividend or other distribution including a stock or reverse split or rights or other subscription offering, of the amount in cash to

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<sup>1</sup> See, e.g., Letter from Josephine J. Tao, Assistant Director to W. John McGuire, Esq., Morgan Lewis & Bockius LLP regarding AdvisorShares Trust (December 16, 2011); Letter from Josephine J. Tao, Assistant Director to Jeremy Senderowicz, Dechert LLP regarding PIMCO Total Return Exchange-Traded Fund (March 1, 2012) and Letter from Josephine J. Tao, Assistant Director to Jack P. Drogin, Schiff Hardin regarding WisdomTree Emerging Markets Corporate Bond Fund (April 16, 2012).

be paid or distributed per share.<sup>2</sup> Rule 10b-17(b)(1)(v)(b) requires that the issuer provide notice, also for a dividend or other distribution including a stock or reverse split or rights or other subscription offering, of the amount (in the same security) of the security outstanding immediately prior to and immediately following the dividend or distribution and the rate of the dividend or distribution.

In adopting Rule 10b-17, the Commission stated its concern that the failure of an issuer to provide timely announcements of record dates may have misleading and deceptive effects.<sup>3</sup> For example, the Commission stated that if buyers and sellers (and their brokers) do not have knowledge that these rights may be forthcoming, they could suffer losses.<sup>4</sup> Also, the Commission found that “some issuers made belated declarations of stock splits or dividends with the apparent knowledge that this action would have a manipulative effect on the market for their securities.”<sup>5</sup> The letter represents, as had the prior requests, that the concerns that the Commission raised in adopting Rule 10b-17 will not be implicated if exemptive relief, subject to the conditions below, is granted to the Trust.

We find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rule 10b-17 to any issuer of an actively managed ETF including the Trust. Specifically, other than receiving a delayed notice of the cash distributed and the shares outstanding, market participants will receive timely notification of the

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<sup>2</sup> If the exact per share cash distributions cannot be given because of existing conversion rights which may be exercised during the notice period and which may affect the per share cash distribution, Rule 10b-17(b)(1)(v)(a) permits the issuer to provide a reasonable approximation of the per share distribution so long as the actual per share distribution is subsequently provided on the record date.

<sup>3</sup> Exchange Act Release No. 9192 (Jun. 7, 1971); 36 FR 11513 (Jun. 15, 1971).

<sup>4</sup> See id.

<sup>5</sup> Id.

existence and timing of a pending distribution as the Fund will comply with all other requirements of Rule 10b-17.<sup>6</sup> Further, the provision of the information required under Rule 10b-17(b)(1)(v)(a) and (b) the day before ex-dividend date should allow market participants time to update their systems to reflect the accurate price once trading begins on the ex-dividend date.

### Conclusion

IT IS HEREBY ORDERED, pursuant to Rule 10b-17(b)(2), that any issuer of an actively managed ETF is exempt from the requirements of Rule 10b-17(b)(1)(v)(a) and (b) with respect to transactions in shares of the actively managed ETF, subject to the following conditions:

- The issuer must comply with Rule 10b-17 except for Rule 10b-17(b)(1)(v)(a) and (b);  
and
- The issuer must provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the national securities exchange upon which shares of the ETF are registered pursuant to section 12 of the Exchange Act (“Exchange”) as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the federal securities laws, particularly Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder. Responsibility for compliance with these and any

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<sup>6</sup> Rule 10b-17(b)(1)(v)(a) and (b). We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical in light of the nature of such ETFs. This is because it is not possible for these ETFs to accurately project ten days in advance the composition of the dividend that would be paid on a particular record date.

other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, such transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(9).