

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72853; File No. SR-NYSEArca-2014-57)

August 15, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2 to List and Trade Shares of the PIMCO Foreign Bond Exchange-Traded Fund (U.S. Dollar-Hedged), PIMCO Foreign Bond Exchange-Traded Fund (Unhedged), PIMCO Global Advantage Bond Exchange-Traded Fund, and PIMCO International Advantage Bond Exchange-Traded Fund

I. Introduction

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)¹ of the Securities Exchange Act of 1934 (“Exchange Act”)² and Rule 19b-4 thereunder,³ a proposed rule change to list and trade shares (“Shares”) of the PIMCO Foreign Bond Exchange-Traded Fund (U.S. Dollar-Hedged) (“Hedged Foreign Bond Fund”), PIMCO Foreign Bond Exchange-Traded Fund (Unhedged) (“Unhedged Foreign Bond Fund”), PIMCO Global Advantage Bond Exchange-Traded Fund (“Global Advantage Bond Fund”), and PIMCO International Advantage Bond Exchange-Traded Fund (“International Advantage Bond Fund”) (each a “Fund,” and collectively “Funds”). The proposed rule change was published for comment in the Federal Register on May 22, 2014.⁴ On June 12, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. On July 9, 2014, the Commission published notice to solicit comments from interested persons on the proposed rule change, as modified by Amendment No. 1, and to designate a longer period for

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 72180 (May 16, 2014), 79 FR 29461.

Commission action on the proposed rule change, as modified by Amendment No. 1.⁵ On July 31, 2014, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.⁶ The Commission received no comments on the proposal. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons and is approving the proposed rule change, as modified by Amendments No. 1 and No. 2, on an accelerated basis.

II. Description of the Proposed Rule Change

The Exchange has proposed to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The

⁵ See Securities Exchange Act Release No. 72531 (July 3, 2014), 79 FR 39048. Pursuant to Section 19(b)(2) of the Act, the Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change. Accordingly, the Commission designated August 21, 2014, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ In Amendment No. 2, the Exchange: (1) designated structured notes, including hybrid or indexed securities and event linked bonds, as non-principal (rather than principal) potential investments of the Funds; (2) provided more information about delayed funding loans, stating that they: (a) are borrowing arrangements in which the lender agrees to make loans up to a maximum amount upon demand by the borrower during a specified term, and (b) normally provide for floating or variable rates of interest; (3) deleted an inaccurate reference to equity securities as a principal investment of the Unhedged Foreign Bond Fund; (4) supplemented its disclosures regarding the pricing of the Funds' underlying investments for net asset value ("NAV") purposes to state that equity securities traded over-the-counter ("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; (5) supplemented its disclosures regarding the availability of price information for the Funds' underlying holdings to add that equity securities traded OTC will be available from major market data vendors; and (6) clarified that the Hedged Foreign Bond Fund and Unhedged Foreign Bond Fund may invest in mortgage-backed securities rated below B subject to the limitation of the Funds to invest up to 10% of its total assets in high-yield securities (junk bonds) rated B or higher by Moody's, or equivalently rated by S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality. The text of Amendment No. 2 is available at: <http://www.sec.gov/comments/sr-nysearca-2014-57/nysearca201457.shtml>.

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.⁷ The investment manager to the Funds will be Pacific Investment Management Company LLC (“PIMCO” or the “Adviser”). PIMCO Investments LLC will serve as the distributor for the Funds. State Street Bank & Trust Co. will serve as the custodian and transfer agent for the Funds. The Exchange represents that the Adviser is not registered as a broker-dealer, but is affiliated with a broker-dealer, and will implement a “firewall” with respect to such broker-dealer regarding access to information concerning the composition of or changes to a Fund’s portfolio.⁸

The Exchange has made the following representations and statements regarding the Fund.⁹

⁷ The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”). On January 27, 2014, the Trust filed an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) and the 1940 Act relating to the Funds (File Nos. 333-155395 and 811-22250) (the “Registration Statement”). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 28993 (November 10, 2009) (File No. 812-13571).

⁸ 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, the adviser or sub-adviser, as appropriate, will implement a firewall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of or changes to the applicable portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. See Amendment No. 2, supra note 6 at 5.

⁹ Additional information regarding the Trust, the Funds, the Shares, investment strategies, investment restrictions, risks, NAV calculation, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions, and taxes, among other information, is included in Amendment No. 2 and the Registration Statement, as applicable. See Amendment No. 2 and Registration Statement, supra notes 6 and 7, respectively.

Hedged Foreign Bond Fund – Principal Investments

The Hedged Foreign Bond Fund will seek maximum total return, consistent with preservation of capital and prudent investment management. The Fund will seek to achieve its investment objective by investing, under normal circumstances,¹⁰ at least 80% of its assets in Fixed Income Instruments¹¹ and derivatives¹² based on Fixed Income Instruments that are economically tied to foreign countries, representing at least three foreign countries (the “Hedged Foreign Bond Fund 80% policy”).

The Hedged Foreign Bond Fund will invest primarily in investment-grade debt securities, but may invest up to 10% of its total assets in high-yield securities (“junk bonds”) rated B or higher by Moody’s Investors Service, Inc. (“Moody’s”), equivalently rated by Standard & Poor’s

¹⁰ With respect to each 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 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.

¹¹ Each Fund may invest in Fixed Income Instruments, which include: securities issued or guaranteed by the U.S. Government, its agencies or government-sponsored enterprises (“U.S. Government Securities”); corporate debt securities of U.S. and non-U.S. issuers, including convertible securities and corporate commercial paper; mortgage-backed and other asset-backed securities; inflation-indexed bonds issued both by governments and corporations; loan participations and assignments; delayed funding loans and revolving credit facilities; bank certificates of deposit, fixed time deposits, and bankers’ acceptances; repurchase agreements on Fixed Income Instruments and reverse repurchase agreements on Fixed Income Instruments; debt securities issued by state or local governments and their agencies, authorities, and other government-sponsored enterprises; obligations of non-U.S. governments or their subdivisions, agencies, and government-sponsored enterprises; and obligations of international agencies or supranational entities. Each of the Funds may invest up to 20% of its assets in mortgage-related and other asset-backed securities, although this 20% limitation does not apply to securities issued or guaranteed by Federal agencies or U.S. government sponsored instrumentalities.

¹² With respect to each Fund, derivative instruments will include forwards; exchange-listed and OTC options contracts; exchange-traded futures contracts; exchange-traded and OTC swap agreements; exchange-traded and OTC options on futures contracts; and exchange-traded and OTC options on swap agreements.

Ratings Services (“S&P”) 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-backed securities rated below B.

In furtherance of the Hedged Foreign Bond Fund 80% policy, or with respect to the Fund’s other investments, the Hedged Foreign Bond Fund may invest in derivative instruments.¹³

Normally, the Hedged Foreign Bond Fund will limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 20% of its total assets. The Fund may engage in foreign currency transactions on a spot (cash) basis or forward basis and may invest in foreign currency futures and exchange-traded or OTC options contracts.¹⁴

The Hedged Foreign Bond 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). The Hedged Foreign Bond Fund may purchase or sell securities that it is eligible to purchase or sell on a when-issued, delayed delivery or forward commitment basis, and may engage in short sales.¹⁵

Hedged Foreign Bond Fund – Other (Non-Principal) Investments

The Hedged Foreign Bond Fund may invest up to 10% of its total assets in preferred stock, convertible securities, and other equity-related securities. The Fund may invest in variable

¹³ With respect to each Fund, derivative instruments will include: forwards; exchange-traded and OTC options contracts; futures contracts; exchange-traded and OTC swap agreements; exchange-traded and OTC options on futures contracts; and exchange-traded and OTC options on swap agreements. See Amendment No. 2, supra note 6 at 8.

¹⁴ See Amendment No. 2, supra note 6 at 13.

¹⁵ See id. at 13-14.

and floating rate securities that are not Fixed Income Instruments, meaning securities that pay interest at rates that adjust whenever a specified interest rate changes or that reset on predetermined dates (such as the last day of a month or calendar quarter).¹⁶ The Fund may invest in floating rate debt instruments (“floaters”) and inverse floating rate debt instruments (“inverse floaters”) that are not Fixed Income Instruments and may engage in credit spread trades.¹⁷

The Hedged Foreign Bond Fund also may invest in trade claims, privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities, commodity-linked notes, hybrid or “indexed” securities, event-linked bonds, and structured notes. The Fund may invest in Brady Bonds.

The Hedged Foreign Bond Fund may enter into repurchase agreements on instruments other than Fixed Income Instruments. The Fund may enter into reverse repurchase agreements on instruments other than Fixed Income Instruments,¹⁸ subject to the Fund’s limitations on borrowings.

Unhedged Foreign Bond Fund – Principal Investments

The Unhedged Foreign Bond Fund will seek maximum total return, consistent with preservation of capital and prudent investment management. The Fund will seek to achieve its investment objective by investing, under normal circumstances, at least 80% of its assets in Fixed Income Instruments and derivatives based on Fixed Income Instruments that are economically tied to foreign countries representing at least three foreign countries (the “Unhedged Foreign Bond Fund 80% policy”).

¹⁶ See id. at 14.

¹⁷ See id.

¹⁸ See id. at 15.

The Unhedged Foreign Bond Fund will invest primarily in investment-grade debt securities, but may invest up to 10% of its total assets in high-yield securities (junk bonds) rated B or higher by Moody's, equivalently rated by S&P or Fitch, or, if unrated, determined by PIMCO to be of comparable quality, except that, within such limitation, the Fund may invest in mortgage-backed securities rated below B.

The Unhedged Foreign Bond Fund may invest in securities and instruments that are economically tied to emerging market countries, subject to applicable limitations set forth herein.

In furtherance of the Unhedged Foreign Bond Fund 80% policy, or with respect to the Fund's other investments, the Unhedged Foreign Bond Fund may invest in derivative instruments.¹⁹

The Unhedged Foreign Bond Fund may invest in securities denominated in foreign currencies, engage in foreign currency transactions on a spot (cash) basis or forward basis and may invest in foreign currency futures and exchange-traded or OTC options contracts.²⁰

The Unhedged Foreign Bond 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). The Fund may purchase or sell securities on a when-issued, delayed delivery, or forward commitment basis and may engage in short sales.²¹

Unhedged Foreign Bond Fund – Other (Non-Principal) Investments

The Unhedged Foreign Bond Fund may invest up to 10% of its total assets in preferred stock, convertible securities, and other equity-related securities. The Fund may invest in variable

¹⁹ See supra, note 13.

²⁰ See Amendment No. 2, supra note 6.

²¹ See id. at 16-17.

and floating rate securities that are not Fixed Income Instruments.²² The Fund may invest in floaters and inverse floaters that are not Fixed Income Instruments and may engage in credit spread trades.²³

The Unhedged Foreign Bond Fund may invest in trade claims, privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities, commodity-linked notes, hybrid or “indexed” securities, event-linked bonds, and structured notes. The Fund may invest in Brady Bonds.

The Unhedged Foreign Bond Fund may enter into repurchase agreements on instruments other than Fixed Income Instruments.²⁴ The Fund may enter into reverse repurchase agreements on instruments other than Fixed Income Instruments subject to the Fund’s limitations on borrowings.²⁵

Global Advantage Bond Fund – Principal Investments

The Global Advantage Bond Fund will seek total return exceeding that of its benchmarks, consistent with prudent investment management. The Fund will seek to achieve its investment objective by investing, under normal circumstances, at least 80% of its assets in Fixed Income Instruments and derivatives based on Fixed Income Instruments that are economically tied to at least three countries, which may include foreign countries and may also include the U.S. (the “Global Advantage Bond Fund 80% policy”).

The Global Advantage Bond Fund may invest in both investment-grade debt securities and high-yield securities (junk bonds) subject to a maximum of 15% of its total assets in

²² See id. at 17.

²³ See id.

²⁴ See id.

²⁵ See id.

securities rated below B by Moody's, S&P, or Fitch, or, if unrated, determined by PIMCO to be of comparable quality.

In furtherance of the Global Advantage Bond Fund 80% policy, or with respect to the Fund's other investments, the Global Advantage Bond Fund may invest in derivative instruments.²⁶

The Global Advantage Bond Fund may invest, without limitation, in securities denominated in foreign currencies and in U.S. dollar-denominated securities of foreign issuers. The Fund may engage in foreign currency transactions on a spot (cash) basis or forward basis and may invest in foreign currency futures and exchange-traded and OTC options contracts.²⁷

The Global Advantage Bond 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). The Global Advantage Bond Fund may purchase or sell securities on a when-issued, delayed delivery, or forward commitment basis and may engage in short sales.²⁸

Global Advantage Bond Fund – Other (Non-Principal) Investments

The Global Advantage Bond Fund may invest up to 10% of its total assets in preferred stock, convertible securities, and other equity-related securities. The Fund may invest in variable and floating rate securities that are not Fixed Income Instruments.²⁹ The Fund may invest in

²⁶ See supra, note 13.

²⁷ See Amendment No. 2, supra note 6 at 18.

²⁸ See id.

²⁹ See id. at 19.

floaters and inverse floaters that are not Fixed Income Instruments³⁰ and may engage in credit spread trades.

The Global Advantage Bond Fund may invest in trade claims, privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities, commodity-linked notes, hybrid or “indexed” securities, event-linked bonds, and structured notes. The Fund may invest in Brady Bonds.

The Global Advantage Bond Fund may enter into repurchase agreements on instruments other than Fixed Income Instruments.³¹ The Fund may enter into reverse repurchase agreements on instruments other than Fixed Income Instruments subject to the Fund’s limitations on borrowings.³²

International Advantage Bond Fund – Principal Investments

The International Advantage Bond Fund will seek total return exceeding that of its benchmarks, consistent with prudent investment management. The Fund will seek to achieve its investment objective by investing, under normal circumstances, at least 80% of its assets in Fixed Income Instruments and derivatives based on Fixed Income Instruments that are economically tied to foreign countries, representing at least three foreign countries (the “International Advantage Bond Fund 80% policy”).

The International Advantage Bond Fund may invest in both investment-grade debt securities and high-yield securities subject to a maximum of 15% of its total assets in securities rated below B by Moody’s, S&P, or Fitch, or, if unrated, determined by PIMCO to be of comparable quality.

³⁰ See id.

³¹ See id.

³² See id.

In furtherance of the International Advantage Bond Fund 80% policy, or with respect to the Fund's other investments, the International Advantage Bond Fund may invest in derivative instruments.³³

The International Advantage Bond Fund may invest, without limitation, in securities denominated in foreign currencies and in U.S. dollar-denominated securities of foreign issuers. The Fund may engage in foreign currency transactions on a spot (cash) basis or forward basis and may invest in foreign currency futures and exchange-traded and OTC options contracts.³⁴

The International Advantage Bond 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). The Fund may purchase or sell securities on a when-issued, delayed delivery, or forward commitment basis and may engage in short sales.³⁵

International Advantage Bond Fund – Other (Non-Principal) Investments

The International Advantage Bond Fund may invest up to 10% of its total assets in preferred stock, convertible securities, and other equity-related securities.

The International Advantage Bond Fund may invest in variable and floating rate securities that are not Fixed Income Instruments.³⁶ The Fund may invest in floaters and inverse floaters that are not Fixed Income Instruments³⁷ and may engage in credit spread trades.

³³ See supra, note 13.

³⁴ See Amendment No. 2, supra note 6 at 20.

³⁵ See id. at 21.

³⁶ See id.

³⁷ See id.

The International Advantage Bond Fund may invest in trade claims, privately placed and unregistered securities, and exchange-traded and OTC-traded structured products, including credit-linked securities, commodity-linked notes, hybrid or “indexed” securities, event-linked bonds, and structured notes. The Fund may invest in Brady Bonds.

The International Advantage Bond Fund may enter into repurchase agreements on instruments other than Fixed Income Instruments.³⁸ The Fund may enter into reverse repurchase agreements on instruments other than Fixed Income Instruments subject to the Fund’s limitations on borrowings.³⁹

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.⁴⁰ In particular, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Exchange Act,⁴¹ which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

³⁸ See id.

³⁹ See id.

⁴⁰ 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).

⁴¹ 15 U.S.C. 78f(b)(5).

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,⁴² 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 CTA high-speed line.

Information regarding market 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.⁴³ Price information relating to equity securities traded OTC will be available from major market data vendors. 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.⁴⁴ Intra-day and closing price information regarding equity securities traded on a national securities exchange, including common stocks, preferred stocks, securities convertible into stocks, closed-end funds, exchange traded funds, and other equity-related securities, will be available from the exchange on which such securities are traded.⁴⁵ 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.⁴⁶ Intra-day and closing price information regarding Fixed Income Instruments also will be available from major market data

⁴² 15 U.S.C. 78k-1(a)(1)(C)(iii).

⁴³ See Amendment No. 2, supra note 6, at 32.

⁴⁴ See id.

⁴⁵ See id. at 31.

⁴⁶ See id. at 31-32.

vendors. Price information relating to forwards will be available from major market data vendors.⁴⁷

In addition, the PIV, 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.⁴⁸ The dissemination of the PIV, together with the Disclosed Portfolio, may allow investors to determine an approximate value of the underlying portfolio of each of the Funds on a daily basis and to provide an estimate of that value throughout the trading day.⁴⁹

On each Business Day, before commencement of trading in Shares in the Core Trading Session (9:30 a.m. E.T. to 4:00 p.m. E.T.) on the Exchange, each of the Funds will disclose on the Trust's website the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for each of the Fund's calculation of NAV at the end of the Business Day.⁵⁰ The Trust's website (www.pimcoetfs.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for each of the Funds that may be downloaded. The Trust's website will include additional quantitative information updated on a daily basis, including, for each of the Funds, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask⁵¹ spread at the time of calculation of the NAV (the "Bid/Ask Price"), and a calculation of the premium and discount of the Bid/Ask

⁴⁷ See id. at 32.

⁴⁸ Several major market data vendors display or make widely available PIV taken from the CTA or other data feeds. See id.

⁴⁹ See id.

⁵⁰ See id. at 30.

⁵¹ The Bid/Ask Price of each of the Funds will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of that Fund's NAV. The records relating to Bid/Ask Prices will be retained by each of the Funds and their service providers. See id.

Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

Further, the Commission 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. On each Business Day, before commencement of trading in Shares in the Core Trading Session (9:30 a.m. E.T. to 4:00 p.m. E.T.) on the Exchange, each of the Funds will disclose on the Trust's website the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for each of the Fund's calculation of NAV at the end of the Business Day.⁵² The Commission notes that 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 will be made available to all market participants at the same time.⁵³

In addition, a basket composition file – which includes the security names and share quantities, if applicable, required to be delivered in exchange for a Fund's Shares, together with estimates and actual cash components – will be publicly disseminated daily prior to the opening

⁵² See id. On a daily basis, the Funds will disclose on the Funds' website 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 a Fund's portfolio. Under accounting procedures followed by the Funds, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the Business Day. See id. at 30-31.

⁵³ See id. at 33.

of the Exchange via the NSCC. The basket will represent one Creation Unit of each of the Funds.⁵⁴

The Commission notes that the Reporting Authority (as defined in NYSE Arca Equities Rule 8.600(c)(4)) that provides the Disclosed Portfolio 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 portfolio.⁵⁵ Further, personnel who make decisions on the Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end 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 firewall with respect to such broker-dealer regarding access to information concerning the composition of or changes to a Fund's portfolio.⁵⁶ The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares.⁵⁷ Trading in Shares will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio of

⁵⁴ See id. at 31.

⁵⁵ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

⁵⁶ See supra note 8 and accompanying text.

⁵⁷ See NYSE Arca Equities Rule 7.12.

the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares may be halted.

The Exchange has represented that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.⁵⁸

In support of this proposal, the Exchange has made the following additional representations:

- (1) Each Fund's Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.
- (2) The Exchange's surveillance 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.⁵⁹
- (3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-traded options, exchange-traded equities, 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,

⁵⁸ See NYSE Arca Equities Rule 8.600(d)(2)(C)(ii).

⁵⁹ The Financial Industry Regulatory Authority ("FINRA") surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. See Amendment No. 2, supra note 6, at 33.

exchange-trade 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 comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's Trade Reporting and Compliance Engine.

- (4) Not more than 10% of the net assets of a Fund in the aggregate invested in exchange-traded equity 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 comprehensive surveillance sharing agreement. Further, not more than 10% of the net assets of a 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 comprehensive surveillance sharing agreement.⁶⁰
- (5) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (6) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the

⁶⁰ See id. at 34.

special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (4) how information regarding the PIV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

- (7) For initial and continued listing, each Fund will be in compliance with Rule 10A-3 under the Act,⁶¹ as provided by NYSE Arca Equities Rule 5.3.⁶²
- (8) Each 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; that is, the limitation that a 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.
- (9) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

⁶¹ 17 CFR 240.10A-3.

⁶² See Amendment No. 2, supra note 6, at 33.

This order is based on all of the Exchange's representations, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act.

IV. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2014-57 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 Number SR-NYSEArca-2014-57. 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 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2014-57, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change as Modified by Amendment Nos. 1 and 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendments No. 1 and No. 2, prior to the thirtieth day after the date of publication of notice of Amendment No. 2 in the Federal Register. In Amendment No. 2, the Exchange included additional information regarding the underlying investments of the Funds which assisted the Commission in analyzing the trading of the Shares on the Exchange. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, to approve the proposed rule change, as modified by Amendments No. 1 and No. 2, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,⁶³ that the proposed rule change, as modified by Amendments No. 1 and No. 2, (SR-NYSEArca-2014-57), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁴

Kevin M. O'Neill
Deputy Secretary

⁶³ 15 U.S.C. 78s(b)(2).

⁶⁴ 17 CFR 200.30-3(a)(12).