

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73706; File No. SR-NYSEArca-2014-89)

December 1, 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 Eight PIMCO Exchange-Traded Funds

I. Introduction

On August 15, 2014, NYSE Arca, Inc. (“NYSEArca” or “Exchange”) 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares of the following eight PIMCO exchange-traded funds, pursuant to NYSE Arca Equities Rule 8.600: PIMCO StocksPLUS[®] Absolute Return Exchange-Traded Fund (“StocksPLUS AR Fund”), PIMCO Small Cap StocksPLUS[®] AR Strategy Exchange-Traded Fund (“Small Cap StocksPLUS AR Fund”), PIMCO Fundamental IndexPLUS[®] AR Exchange-Traded Fund (“Fundamental IndexPLUS Fund”), PIMCO Small Company Fundamental IndexPLUS[®] AR Strategy Exchange-Traded Fund (“Small Company Fundamental IndexPLUS Fund”), PIMCO EM Fundamental IndexPLUS[®] AR Strategy Exchange-Traded Fund (“EM Fundamental IndexPLUS Fund”), PIMCO International Fundamental IndexPLUS[®] AR Strategy Exchange-Traded Fund (“International Fundamental IndexPLUS Fund”), PIMCO EM StocksPLUS[®] AR Strategy Exchange-Traded Fund (“EM StocksPLUS Fund”), and PIMCO International StocksPLUS[®] AR Strategy Exchange-Traded Fund (Unhedged) (“International StocksPLUS Fund”) (each a “Fund” and collectively the “Funds.”). The proposed rule change was published for comment in the Federal Register on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

September 3, 2014.³ The Commission received no comments on the proposal. On October 15, 2014, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ This order institutes proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade shares (“Shares”) of the Funds under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares.⁷

³ See Securities Exchange Act Release No. 72937 (Aug. 27, 2014), 79 FR 52385 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 73364, 79 FR 62988 (Oct. 21, 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 December 2, 2014 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

A. Characteristics and Holdings of the Funds⁸

1. Investment Objective and Principal Holdings

Each Fund would seek total return that exceeds the total return of its equity securities index benchmark, and under normal circumstances would seek to achieve its investment objective by investing in derivatives overlying its benchmark and a portfolio of Fixed Income Instruments (defined below), which would be managed using an absolute return approach. Typically, the Funds would use derivative instruments as a substitute for taking a position in the underlying asset⁹ or as part of a strategy designed to reduce exposure to other risks. The Funds may also use derivative instruments to enhance returns.

The Exchange states that “Fixed Income Instruments” may 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; structured notes, including hybrid or “indexed” securities, and event-linked bonds;¹⁰ bank capital and trust

⁸ Additional information regarding the Shares and the Funds, including investment strategy, risks, creation and redemption procedures, portfolio holdings, and investment restrictions, is included in the Notice, supra note 3.

⁹ The Exchange states that derivatives may be purchased with a small fraction of the assets that would be needed to purchase the benchmark index securities directly, so that the remainder of the Funds’ assets may be invested in Fixed Income Instruments. Accordingly, the Funds generally would not invest directly in benchmark index component stocks, but the Exchange states that the Funds may invest in stocks and exchange-traded funds.

¹⁰ The Exchange states that such investments will constitute only up to 20% of a Fund’s total assets.

preferred securities; loan participations and assignments;¹¹ delayed funding loans and revolving credit facilities; bank certificates of deposit, fixed time deposits and bankers' acceptances; repurchase agreements on Fixed Income Instruments and reverse repurchase agreements on Fixed Income Instruments; debt securities issued by states or local governments and their agencies, authorities and other government-sponsored enterprises; obligations of non-U.S. governments or their subdivisions, agencies, and government-sponsored enterprises; and obligations of international agencies or supranational entities. The Exchange also states that derivative instruments may include the following: forwards; exchange-traded and over-the-counter ("OTC") options contracts; exchange-traded futures contracts; exchange-traded and OTC swap agreements; exchange-traded and OTC options on futures contracts; and OTC options on swap agreements.¹²

2. Other Investments

The Funds may invest in securities and instruments that are economically tied to foreign (non-U.S.) countries. The Funds may invest in securities denominated in foreign (non-U.S.) currencies and in U.S. dollar-denominated securities of foreign (non-U.S.) issuers, subject to applicable limitations set forth in the Notice. With respect to the Funds' absolute return investments, each Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 20% of its total assets. With respect to the Funds' absolute return investments, each Fund may invest up to 25% of its total assets in securities and instruments that are economically tied to emerging market countries.

¹¹ The Exchange states that such investments will constitute only up to 20% of a Fund's total assets.

¹² According to the Exchange, all investment guidelines and limitations will apply to a Fund's aggregate investment exposure to a particular type of investment that is the subject of the guideline or limitation, whether such exposure is obtained through direct holdings or through derivative instruments. See Notice, supra note 3, at 52387.

The Funds may engage in foreign currency transactions on a spot (cash) basis or forward basis, and they may invest in foreign currency futures contracts and options contracts. The Funds 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 Funds will engage in such transactions at any given time or from time to time.

The Funds may, without limitation, seek to obtain market exposure to the securities in which they primarily invest by entering into a series of purchase and sale contracts. The Funds may purchase or sell securities on a when-issued, delayed delivery or forward commitment basis and may engage in short sales.

3. Additional Investment Limits

According to the Exchange, each of the Funds may invest up to 10% of its total assets in preferred stocks, convertible securities, and other equity-related securities. Each Fund may invest up to 20% of its total assets in: (i) variable and floating rate securities that are not Fixed Income Instruments; (ii) floaters and inverse floaters that are not Fixed Income Instruments; (iii) trade claims, privately placed and unregistered securities, exchange-traded and OTC-traded structured products, including credit-linked securities and commodity-linked notes; (iv) Brady Bonds; and (v) bank loans.

Each Fund may, with up to 20% of its total assets, enter into repurchase agreements on instruments other than Fixed Income Instruments. Each Fund may also, with up to 20% of its total assets, enter into reverse repurchase agreements on instruments other than Fixed Income Instruments, subject to the Fund's limitations on borrowings.

Each Fund may invest up to 20% of its total assets in “high yield securities” or unrated securities determined by PIMCO to be of comparable quality (except that within such limitation, the Fund may invest in mortgage-related securities rated below B).

Each Fund 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 and/or U.S. government sponsored instrumentalities.

III. Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹³ 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, as discussed below. 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, the Commission seeks and encourages interested persons to provide comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁴ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the proposed rule change’s consistency with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative

¹³ 15 U.S.C. 78s(b)(2)(B).

¹⁴ Id.

acts and practices, to promote just and equitable principles of trade,” and “to protect investors and the public interest.”¹⁵

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified 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 (1) the transparency and liquidity of the markets for the assets in which each Fund would be permitted to invest a substantial portion of its portfolio and (2) the expected effectiveness and efficiency of arbitrage with respect to the market price of the Funds’ shares and the value of the underlying portfolio assets, given the transparency and liquidity of the markets for those underlying assets.

Although there do not appear to be any issues relevant to approval or disapproval which 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.¹⁶

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].

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 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 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).

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-2014-89 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-2014-89. 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 such 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-2014-89 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.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(57).