

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66321; File No. SR-NYSEArca-2011-95)

February 3, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading of the PIMCO Total Return Exchange Traded Fund under NYSE Arca Equities Rule 8.600

I. Introduction

On December 13, 2011, 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 Total Return Exchange Traded Fund (“Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on December 22, 2011.³ The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the 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.⁴ The investment manager to the Fund is Pacific Investment

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 65988 (December 16, 2011), 76 FR 79741 (“Notice”).

⁴ The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”). On July 7, 2011, the Trust filed with the Commission Post-Effective Amendment No. 30 to Form N-1A relating to the Fund (File Nos. 333-155395 and 811-

Management Company LLC (“PIMCO” or “Adviser”). PIMCO Investments LLC serves as the distributor for the Fund, and State Street Bank & Trust Co. serves as the custodian and transfer agent for the Fund.

The Adviser is affiliated with a broker-dealer and has implemented a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio. If PIMCO elects to hire a sub-adviser for the Fund that is also affiliated with a broker-dealer, such sub-adviser will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio.⁵

Description of the Fund

The Fund will seek maximum total return, consistent with preservation of capital and prudent investment management. The Fund will invest under normal market circumstances⁶ at

22250) (“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) (“Exemptive Order”).

⁵ See Commentary .06 to NYSE Arca Equities Rule 8.600. In the event (a) the Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new manager, adviser, or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

⁶ The term “under normal market circumstances” includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

least 65% of its total assets in a diversified portfolio of Fixed Income Instruments⁷ of varying maturities. The Fund will invest primarily (under normal market circumstances, at least 65% of its total assets) in investment-grade Fixed Income Instruments, but may invest up to 10% of its total assets in high-yield Fixed Income Instruments (“junk bonds”) rated B3 through Ba1 by Moody’s Investors Service, Inc., or equivalently rated by Standard & Poor’s Ratings Services or Fitch, Inc., or, if unrated, determined by PIMCO to be of comparable quality. The average portfolio duration of the Fund normally will vary within two years of the duration of the Barclays Capital U.S. Aggregate Index, which as of May 31, 2011, was 5.19 years.

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

⁷ “Fixed Income Instruments” on which the Fund will focus will be: debt 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; bank capital and trust preferred securities; 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 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.

Securities issued by U.S. Government agencies or government-sponsored enterprises may not be guaranteed by the U.S. Treasury.

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 Instruments into sectors, such as money markets, governments, corporates, mortgages, asset-backed and international. Once investment opportunities are identified, PIMCO will shift assets among sectors depending upon changes in relative valuations and credit spreads.

The Fund may invest in debt securities and instruments that are economically tied to foreign countries. PIMCO generally considers 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.

The Fund may invest up to 30% of its total assets in securities denominated in foreign currencies and may invest beyond this limit in U.S. dollar-denominated securities of foreign issuers, subject to the Fund's 10% of total assets limit on investments in preferred stock, convertible securities, and other equity related securities.⁸ The Fund will normally limit its foreign currency exposure (from non-U.S. dollar-denominated securities or currencies) to 20% of its total assets.

The Fund may invest up to 15% of its total assets in securities and instruments that are economically tied to emerging market countries. PIMCO has broad discretion to identify countries that it considers to qualify as emerging markets but generally considers an instrument

⁸ The Fund will not invest in any non-U.S registered equity securities, except if such securities are traded on exchanges that are members of the Intermarket Surveillance Group ("ISG").

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. While corporate debt securities and debt securities economically tied to an emerging market country generally must have \$200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for the Fund, at least 80% of issues of such securities held by the Fund must have \$200 million or more par amount outstanding.

The Fund may invest, without limitation, in mortgage- or asset-backed securities. The Fund may purchase or sell debt and equity securities on a when-issued, delayed delivery, or forward commitment basis. In addition, 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). The “total return” sought by the Fund will consist of income earned on the Fund’s investments, plus capital appreciation, if any, which generally arises from decreases in interest rates, foreign currency appreciation, or improving credit fundamentals for a particular sector or security.

The Fund may invest in Brady Bonds, which are debt securities created through the exchange of existing commercial bank loans to sovereign entities for new obligations in connection with a debt restructuring, as well as in municipal bonds. The types of municipal bonds in which the Fund may invest include municipal lease obligations, municipal general obligation bonds, municipal cash equivalents, and pre-refunded and escrowed to maturity municipal bonds. The Fund may also invest in industrial development bonds, which are

municipal bonds issued by a government agency on behalf of a private sector company and which, in most cases, are not backed by the credit of the issuing municipality. The Fund may invest in pre-refunded municipal bonds, which are tax-exempt bonds that have been refunded to a call date on or before the final maturity of principal and remain outstanding in the municipal market. Furthermore, the Fund may invest in securities issued by entities whose underlying assets are municipal bonds.

The Fund may invest in Lower Tier II, Upper Tier II, and Tier I bank capital securities, which are issued by banks to help fulfill their regulatory capital requirements. Bank capital is generally, but not always, investment grade. The Fund may invest in variable and floating rate debt securities, floating rate debt instruments, and engage in credit spread trades. 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.

Other Portfolio Holdings

The Fund may engage in foreign currency transactions on a spot (cash) basis and enter into forward foreign currency exchange 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. The Fund may use one currency (or a basket of currencies) to hedge against adverse changes in the value of another currency (or a basket of currencies) when exchange rates between the two currencies are positively correlated. The Fund will segregate or “ earmark ” assets determined to be liquid by PIMCO in accordance with the procedures established by the Fund’s Board of Trustees (or, as permitted by applicable law, enter into certain offsetting positions) to cover its obligations under forward foreign currency exchange contracts entered into for non-hedging purposes.

If PIMCO believes that economic or market conditions are unfavorable to investors, PIMCO may temporarily invest up to 100% of the Fund's assets in certain defensive strategies, including holding a substantial portion of the Fund's assets in cash, cash equivalents, or other highly rated, short-term debt securities, including debt securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, and affiliated money market and/or short-term bond funds.

The Fund may invest in, to the extent permitted by Section 12(d)(1)(A) of the 1940 Act, other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, including other exchange traded funds, provided that the Fund's investment in units or shares of investment companies and other open-end collective investment vehicles will not exceed 10% of the Fund's net 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, an affiliated open-end management investment company managed by PIMCO.

The Fund may invest up to 10% of its total assets in preferred stock, convertible securities and other equity related securities. Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements.

The Fund may 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 may not, with respect to 75% of the Fund's total assets, purchase the securities of any issuer, except securities issued or guaranteed by the U.S. government or any of its agencies or instrumentalities, if, as a result (i) more than 5% of the Fund's total assets would be invested in the securities of that issuer, or (ii) the Fund would hold

more than 10% of the outstanding voting securities of that issuer. For the purpose of this restriction, each state and each separate political subdivision, agency, authority, or instrumentality of such state, each multi-state agency or authority, and each guarantor are treated as separate issuers of municipal bonds.

The Fund may hold up to 15% of its net assets in illiquid securities. Certain financial instruments, including, but not limited to, Rule 144A securities, loan participations and assignments, delayed funding loans, revolving credit facilities, and fixed- and floating-rate loans will be included in the 15% limitation on illiquid securities.

The Fund intends to qualify annually and elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code. The Fund will not invest in any non-U.S registered equity securities, except if such securities are traded on exchanges that are ISG members. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple of the Fund's broad-based securities market index.

Additional information regarding the Trust, Fund, Shares, Fund's investment strategies, risks, creation and redemption procedures, fees, portfolio holdings and disclosure policies, distributions and taxes, and information relating to the daily disclosure of the Fund's holdings, Portfolio Indicative Value ("PIV"), and net asset value ("NAV"), among others, can be found in the Notice and the Registration Statement, as applicable.⁹

⁹ See Notice and Registration Statement, supra notes 3 and 4, respectively.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act¹⁰ and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹² 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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

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 Act,¹³ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the 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 Exchange's Core

¹⁰ 15 U.S.C. 78f.

¹¹ 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).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78k-1(a)(1)(C)(iii).

Trading Session.¹⁴ On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Trust’s website will disclose the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund’s calculation of the NAV at the end of the business day.¹⁵ The NAV of the Fund’s Shares will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange (“NYSE”), generally 4:00 p.m. Eastern time (“E.T.”) on any business day. In addition, 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, and the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The Trust’s website will also include a form of the prospectus for the Fund, information relating to NAV, and other quantitative and trading information. Moreover, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for the Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares

¹⁴ According to the Exchange, several major market data vendors display and/or make widely available PIVs published on the CTA or other data feeds.

¹⁵ On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The website information will be publicly available at no charge.

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.¹⁶ In addition, the Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D), and may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.¹⁷ The Exchange will consider the suspension of trading in or removal from listing of the Shares if the PIV is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time.¹⁸ The Exchange represents that the Adviser is affiliated with a broker-dealer, and such Adviser has implemented a “fire wall” with respect to the broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio.¹⁹ Further, the Commission notes that the Reporting Authority that provides

¹⁶ See NYSE Arca Equities Rule 8.600(d)(1)(B).

¹⁷ With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund 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.

¹⁸ See NYSE Arca Equities Rule 8.600(d)(2)(C)(ii).

¹⁹ See *supra* note 5 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (“Advisers Act”). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder;

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.²⁰ The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Commission also notes that the Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange further represents 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. In support of this proposal, the Exchange has made representations, including:

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.
- (4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will

(ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

²⁰ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

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

- (5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Act,²¹ as provided by NYSE Arca Equities Rule 5.3.
- (6) The Fund will not: (a) hold more than 15% of its net assets in illiquid securities, including, but not limited to, Rule 144A securities, loan participations and assignments, delayed funding loans, revolving credit facilities, and fixed- and floating-rate loans; (b) pursuant to the terms of the Exemptive Order, invest in options contracts, futures contracts, or swap agreements; or (c) invest in any non-U.S. registered equity securities, except if such securities are traded on exchanges that are ISG members.
- (7) The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

²¹ See 17 CFR 240.10A-3.

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

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act²² and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²³ that the proposed rule change (SR-NYSEArca-2011-95) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Kevin M. O'Neill
Deputy Secretary

²² 15 U.S.C. 78f(b)(5).

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).