

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>9</sup> of the Act and Rule 19b-4(f)(2)<sup>10</sup> thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2009-90 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-NYSE-2009-90. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such 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-NYSE-2009-90 and should be submitted on or before October 2, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60621; File No. SR-NYSEArca-2009-77]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Options Rule 5.3(j)**

September 3, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on August 19, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the definition of Futures-Linked Securities for the trading of options on Index-Linked Securities. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of

this filing is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the Exchange's principal office and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

NYSE Arca Rules [sic] 5.3(j) designates the listing and trading of options on equity index-linked securities ("Equity Index-Linked Securities"), commodity-linked securities ("Commodity-Linked Securities"), currency-linked securities ("Currency-Linked Securities"), fixed income index-linked securities ("Fixed Income Index-Linked Securities"), futures-linked securities ("Futures-Linked Securities") and multifactor index-linked securities ("Multifactor Index-Linked Securities"), collectively known as "Index-Linked Securities" (as defined in NYSE Arca Equities Rule 5.2(j)(6)) that are principally traded on a national securities exchange and an "NMS Stock" (as defined in Rule 600 of Regulation NMS under the Securities and Exchange Act of 1934). The Exchange proposes to amend the definition of Futures-Linked Securities for the trading of options on Index-Linked Securities to include products linked to CBOE Volatility Index (VIX) Futures. This proposal is substantially similar to the previously approved NYSE Arca Equities Rule 5.2(j)(6)(v).<sup>4</sup>

Specifically, the Exchange proposes to add the CBOE Volatility Index (VIX) Futures to the definition of a Futures Reference Asset in NYSE Arca Rule 5.3(j)(1)(E).

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> U.S.C. 78s(b)(1).

<sup>25</sup> U.S.C. 78a.

<sup>17</sup> CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 34-58968 (November 17, 2008), 73 FR 64647 (SR-NYSEArca-2008-111).

underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing ("Underlying Index" or "Underlying Indexes"). Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options apply to Index-Linked Securities.

Currently, the Exchange will consider listing and trading options on Index-Linked Securities provided the Index-Linked Securities meet the criteria for underlying securities set forth in Rule 5.3(a)–(b).

Index-Linked Securities must meet the criteria and guidelines for underlying securities set forth in Rule 5.3(a); or the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable underlying Reference Asset.<sup>5</sup> In addition, the issuing company is obligated to issue or repurchase the securities in aggregation units for cash or cash equivalents satisfactory to the issuer of Index-Linked Securities which underlie the option as described in the Index-Linked Securities prospectus.

Options on Index-Linked Securities will continue to be subject to all Exchange rules governing the trading of equity options. The current continuing or maintenance listing standards for options traded on NYSE Arca will continue to apply.

#### The VIX

The information in this filing relating to the VIX was taken from the Web site of the Chicago Board Options Exchange (the "CBOE").

The VIX was originally developed by the CBOE in 1993 and was calculated using S&P 100® Index options. The current methodology for the VIX was introduced by the CBOE in September 2003 and it is now an index that uses the quotes of certain S&P 500® Index ("SPX") option series to derive a measure of the volatility of the U.S. equity market. The VIX measures market expectations of near term volatility conveyed by the prices of options on the SPX. It provides

investors with up-to-the-minute market estimates of expected stock market volatility over the next 30 calendar days by extracting implied volatilities from real-time index option bid/ask quotes.

#### VIX Futures

Information regarding VIX Futures can be found on the Web site of the CBOE Futures Exchange (the "CFE").

The CFE began listing and trading VIX Futures since March 26, 2004 under the ticker symbol VX. VIX Futures trade between the hours of 8:30 a.m.—3:15 p.m. Central Time (Chicago Time).

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>6</sup> of the Securities Exchange Act of 1934 ("Act") in general, and furthers the objectives of Section 6(b)(5)<sup>7</sup> in particular in that it is 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, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange's surveillance procedures applicable to trading in the securities covered by the proposed rules, serve to foster investor protection.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to

90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2009-77 on the subject line.

##### Paper Comments

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

All submissions should refer to File Number SR-NYSEArca-2009-77. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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

<sup>5</sup> For the purposes of Rule 5.3(j), Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, Futures Reference Assets and Multifactor Reference Assets, will be collectively referred to as "Reference Assets," as defined in NYSE Arca Equities Rule 5.2(j)(6).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–77 and should be submitted on or before October 2, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60619; File No. SR–NYSEArca–2009–79]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing of Five Fixed Income Funds of the PIMCO ETF Trust

September 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that, on August 27, 2009, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Exchange Act, NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities” or the “Corporation”), proposes to list and trade the shares of the following funds of the PIMCO ETF Trust (the “Trust”) under NYSE Arca Equities Rule 8.600 (Managed Fund Shares): PIMCO Enhanced Short Maturity Strategy Fund, PIMCO Government Limited Maturity Strategy Fund, PIMCO Intermediate Municipal Bond Strategy Fund, PIMCO Prime Limited Maturity Strategy Fund, and PIMCO Short Term Municipal Bond Strategy Fund, (each a “Fund” and, collectively, the “Funds”). The shares of

the Funds are collectively referred to herein as the “Shares.”

The text of the proposed rule change is available on the Exchange’s Web site at <http://www.nyx.com>, at the Exchange’s principal office and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to list and trade the Shares of the Funds under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.<sup>3</sup> Each of the Funds will be an actively managed exchange traded fund. The Shares will be offered by the Trust, which is a Delaware statutory trust. The Trust is registered with the Commission as an investment company.<sup>4</sup>

<sup>3</sup> The Commission approved NYSE Arca Equities Rule 8.600 and the listing and trading of certain funds of the PowerShares Actively Managed Funds Trust on the Exchange pursuant to Rule 8.600 in Securities Exchange Act Release No. 57619 (April 4, 2008) 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25). The Commission also previously approved listing and trading on the Exchange, or trading on the Exchange pursuant to unlisted trading privileges (“UTP”) of the following actively managed funds under Rule 8.600: Securities Exchange Act Release No. 57626 (April 4, 2008), 73 FR 19923 (April 11, 2008) (SR–NYSEArca–2008–28) (order approving trading on the Exchange pursuant to UTP of Bear Stearns Active ETF); Securities Exchange Act Release No. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); Securities Exchange Act Release No. 59826 (April 28, 2009), 74 FR 20512 (May 4, 2009) (SR–NYSEArca–2009–22) (order approving Exchange listing and trading of Grail American Beacon Large Cap Value ETF); Securities Exchange Act Release No. 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving Exchange listing and trading of Dent Tactical ETF).

<sup>4</sup> See Registration Statement on Form N–1A for the Trust filed with the Securities and Exchange Commission on July 22, 2009 (File Nos. 333–155395 and 811–22250) (the “Registration Statement”). The

Description of the Shares and the Funds

Pacific Investment Management Company LLC (“PIMCO”) is the investment adviser (“Adviser”) to each Fund.<sup>5</sup> State Street Bank & Trust Co. is the custodian and transfer agent for the Funds. The Trust’s Distributor is Allianz Global Investors Distributors LLC (the “Distributor”), an indirect subsidiary of Allianz Global Investors of America L.P. (“AGI”), PIMCO’s parent company. The Distributor is a registered broker-dealer.<sup>6</sup>

Commentary .07 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to

descriptions of the Funds and the Shares contained herein are based on information in the Registration Statement.

<sup>5</sup> The Exchange represents that the Adviser, as the investment adviser of the Funds, and its related personnel, are subject to Investment Advisers Act Rule 204A–1. This Rule specifically requires the adoption of a code of ethics by an investment advisor to include, at a minimum: (i) Standards of business conduct that reflect the firm’s/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable Federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A–1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer (“CCO”) or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment advisor to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment advisor to provide investment advice to clients unless such investment advisor has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment advisor and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (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.

<sup>6</sup> The Funds have made application for an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (“1940 Act”). In compliance with Commentary .05 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares based on an international or global portfolio, the Trust’s application for exemptive relief under the 1940 Act states that the Funds will comply with the Federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

<sup>8</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.