

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-CBOE-2009-086 and should be submitted on or before December 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60981; File No. SR-NYSEArca-2009-79]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Listing of Five Fixed Income Funds of the PIMCO ETF Trust

November 10, 2009.

On August 27, 2009, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the

Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the following funds of the PIMCO ETF Trust ("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 proposed rule change was published in the **Federal Register** on September 11, 2009.<sup>3</sup> The Commission received no comments on the proposal. On November 10, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> This order provides notice of the filing of Amendment No. 1, and approves the proposed rule change, as modified by Amendment No. 1 thereto, on an accelerated basis.

#### I. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.600, which governs the listing of Managed Fund Shares. Each of the Funds will be an actively managed exchange-traded fund. The Shares will be offered by the Trust.<sup>5</sup> Pacific Investment Management Company LLC

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 60619 (September 3, 2009), 74 FR 46820 ("Notice").

<sup>4</sup> Amendment No. 1 reflects the following changes to the proposed rule change: (a) On November 3, 2009, the Trust filed a Registration Statement on Form N-1A with the Commission (File Nos. 333-155395 and 811-22250); (b) with respect to the PIMCO Enhanced Short Maturity Strategy Fund, such Fund will be restricted from investing in derivative instruments such as options contracts, futures contracts, options on futures contracts, and swap agreements (including, but not limited to, credit default swaps and swaps on exchange-traded funds); and (c) the respective creation unit sizes for the following Funds will be changed:

(i) PIMCO Enhanced Short Maturity Strategy Fund creation unit size will be reduced to 70,000 shares from 100,000 shares;

(ii) PIMCO Government Limited Maturity Strategy Fund creation unit size will be reduced to 90,000 shares from 100,000 shares; and

(iii) PIMCO Prime Limited Maturity Strategy Fund creation unit size will be reduced to 90,000 shares from 100,000 shares.

The creation unit sizes for each of the PIMCO Intermediate Municipal Bond Strategy Fund and the PIMCO Short Term Municipal Bond Strategy Fund will not change and will be 100,000 shares, respectively.

<sup>5</sup> The Trust is a Delaware statutory trust that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act"). See Registration Statement on Form N-1A for the Trust filed with the Commission on November 3, 2009 (File Nos. 333-155395 and 811-22250) ("Registration Statement").

("PIMCO" or "Adviser") is the investment adviser to each Fund.<sup>6</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 ("Distributor"), an indirect subsidiary of Allianz Global Investors of America L.P., PIMCO's parent company. The Distributor is a registered broker-dealer.<sup>7</sup>

The Exchange states that the Shares will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600 applicable to Managed Fund Shares<sup>8</sup> and that the Shares will comply with Rule 10A-3

<sup>6</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 adviser 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 adviser 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 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; (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>7</sup> The Funds have made application for an order granting certain exemptive relief to the Trust under the 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> The Exchange states that a minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange, and the Exchange will obtain a representation from the issuer of the Shares that the net asset value ("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. See Notice, *supra* note 3.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

under the Act,<sup>9</sup> as provided by NYSE Arca Equities Rule 5.3. Additional information regarding the Trust, each of the Funds, the Shares, the Funds' investment objectives, strategies, policies, and restrictions, risks, fees and expenses, creation and redemption procedures, portfolio holdings and policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.<sup>10</sup>

## II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 to 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-2009-79 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-2009-79. 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 you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2009-79 and should be submitted on or before December 9, 2009.

## 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 Act<sup>11</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>13</sup> which requires, among other things, that the Exchange's rules be designed 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 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,<sup>14</sup> 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, and the Exchange will disseminate the Portfolio Indicative Value ("PIV") at least every 15 seconds during the Core Trading Session through the facilities of the CTA. In addition, the Funds will make available on a Web site on each business day the Disclosed Portfolio that will form the basis for the calculation of the NAV, which will be determined as of the close of the regular trading

session on the New York Stock Exchange (ordinarily 4 p.m. Eastern Time) on each business day. The Funds' Web site will also include additional quantitative information updated on a daily basis relating to trading volume, prices, and NAV. Information regarding the market price and volume of the Shares will be continually available on a real-time basis throughout the day via electronic services, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial sections of newspapers.

The Commission further believes that the proposal 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 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.<sup>15</sup> Additionally, if it becomes aware that the NAV or the Disclosed Portfolio is not disseminated daily to all market participants at the same time, the Exchange will halt trading in the Shares until such information is available to all market participants.<sup>16</sup> Further, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.<sup>17</sup> The Exchange represents that the Adviser is affiliated with a broker-dealer, Allianz Global Investors Distributors LLC, and has implemented a "fire wall" between it and its broker-dealer affiliate with respect to access to information concerning the composition and/or changes to each of the Funds' portfolios. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-

<sup>15</sup> See NYSE Arca Equities Rule 8.600(d)(1)(B).

<sup>16</sup> See NYSE Arca Equities Rule 8.600(d)(2)(D).

<sup>17</sup> *Id.* Trading in the Shares may also 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 comprising the Disclosed Portfolio and/or the financial instruments of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

<sup>9</sup> 17 CFR 240.10A-3.

<sup>10</sup> See *supra* notes 3 and 5.

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 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).

<sup>13</sup> 17 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

public information regarding the actual components of each of the portfolios.<sup>18</sup>

The Exchange has represented that the Shares are equity securities subject to the Exchange's 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'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 applicable federal securities laws.

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares and that Shares are not individually redeemable; (b) 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; (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 ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(4) The Funds will be in compliance with Rule 10A-3 under the Act.

(5) The Funds will not invest in non-U.S. equity securities.

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 the Act and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the **Federal Register**. The Commission notes that it has approved the listing and trading on the Exchange of shares of other actively managed exchange-traded funds based

on a portfolio of securities, the characteristics of which are similar to those to be invested by the Funds.<sup>20</sup> The Commission also notes that it has received no comments regarding the proposed rule change. Further, the Commission believes that the additional investment restrictions with respect to the PIMCO Enhanced Short Maturity Strategy Fund and the decreased creation and redemption unit sizes for certain of the Funds, as described in Amendment No. 1 to the proposed rule change,<sup>21</sup> do not raise any novel regulatory concerns. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Managed Fund Shares.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> that the proposed rule change (SR-NYSEArca-2009-79), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60983; File No. SR-NYSE-2009-84]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, Amending NYSE Rule 36 To Permit the Use of Personal Portable or Wireless Communication Devices Off the Exchange Trading Floor and Outside Other Restricted Access Areas

November 10, 2009.

#### I. Introduction

On August 27, 2009, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change, as modified by Amendment No. 1, <sup>4</sup> to amend NYSE Rule 36 to permit the use of personal portable or wireless communication devices off the Exchange Trading Floor and outside other restricted access areas, and make corresponding technical changes. The proposed rule change was published for comment in the **Federal Register** on September 28, 2009.<sup>5</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

#### II. Background

Currently, NYSE Rule 36 (Communications Between Exchange and Members' Offices) prohibits members and member organizations from establishing or maintaining any telephonic or electronic communication, including the usage of any portable or wireless communication devices (*i.e.* cellular phone, wireless pager, BlackBerry<sup>TM</sup>, etc.), between the Floor, as defined in NYSE Rule 6, and any other location without prior Exchange approval.

Notwithstanding the rule's general prohibition on the use of portable or wireless communication devices, current Rule 36 permits Floor brokers to use Exchange authorized and issued portable phones on the Floor to

<sup>20</sup> See, e.g., Securities Exchange Act Release Nos. 57514 (March 17, 2008), 73 FR 15230 (March 21, 2008) (SR-Amex-2008-02) (approving the listing and trading of shares of the Bear Stearns Current Yield Fund); 57626 (April 4, 2008), 73 FR 19923 (April 11, 2008) (SR-NYSEArca-2008-28) (approving the trading of shares of the Bear Stearns Current Yield Fund on the Exchange pursuant to UTP); and 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (approving the listing and trading of shares of twelve actively-managed funds of the WisdomTree Trust).

<sup>21</sup> See *supra* note 4.

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> Amendment No. 1, which the Exchange filed on September 17, 2009, superseded and replaced the original filing in its entirety.

<sup>5</sup> See Securities Exchange Act Release No. 60691 (September 18, 2009), 74 FR 49431 FR 34609 ("Notice").

<sup>18</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

<sup>19</sup> 15 U.S.C. 78s(b)(2).