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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89068; File No. SR-NYSEArca-2020-37]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Make Certain Changes Regarding the Investments of the PIMCO Enhanced Short Maturity Active ESG Exchange-Traded Fund
June 15, 2020.

I. Introduction

On April 29, 2020, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 make certain changes regarding the investments of the PIMCO Enhanced Short Maturity Active ESG Exchange-Traded Fund (“Fund”). On May 4, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on May 12, 2020.³ The Commission has received no comment letters on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

I. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes certain changes, as described below, regarding investments of the Fund. The shares (“Shares”) of the Fund are currently listed and traded on the Exchange

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 88822 (May 6, 2020), 85 FR 28061 (“Notice”).

under Commentary .01 to NYSE Arca Rule 8.600-E (“Managed Fund Shares”).⁴ The Fund is a series of PIMCO ETF Trust (“Trust”).⁵ Pacific Investment Management Company LLC is the investment adviser (“Adviser”) to the Fund.⁶ PIMCO Investments LLC is the distributor of the Shares and State Street Bank & Trust Co. acts as the custodian and transfer agent for the Fund.

A. Fund Investments

According to the Exchange, the investment objective of the Fund is to seek maximum current income, consistent with preservation of capital and daily liquidity, while incorporating the Adviser’s environment, social responsibility, and governance (“ESG”) investment strategy. In managing the Fund’s portfolio, the Adviser may avoid investment in the securities of issuers whose ESG practices are not to the Adviser’s satisfaction.

⁴ The Shares commenced trading on the Exchange on December 10, 2019.

⁵ The Exchange states that the Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On November 12, 2019, the Trust filed with the Commission its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-155395 and 811-22250) (“Registration Statement”). In addition, the Exchange states that the Commission has issued an order upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 28993 (November 10, 2009) (File No. 812-13571).

⁶ The Exchange states that the Adviser is not registered as a broker-dealer, but the Adviser is affiliated with a broker-dealer and has implemented and will maintain a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with one or more broker-dealers, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate 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.

Under normal market conditions,⁷ the Fund invests at least 80% of its net assets in a diversified portfolio of fixed income securities of varying maturities, which may be represented by forwards, and will consist of the following (collectively, “Fixed Income Instruments”):

- securities issued or guaranteed by the U.S. government, its agencies, or U.S. government-sponsored entities;
- corporate debt securities of U.S. and non-U.S. issuers, including convertible securities and corporate commercial paper;
- mortgage-backed securities (“MBS”) and other asset-backed securities (“ABS”), including non-agency, non-government-sponsored entity (“GSE”) and privately-issued mortgage-related and other asset-backed securities (“Private ABS/MBS”), collateralized bond obligations (“CBOs”), collateralized loan obligations (“CLOs”), and other collateralized debt obligations (“CDOs”);⁸
- 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;

⁷ The term “normal market conditions” is defined in NYSE Arca Rule 8.600-E(c)(5).

⁸ The Exchange states that “Private ABS/MBS” as referenced in the filing are non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities as stated in Commentary .01(b)(5) to NYSE Arca Rule 8.600-E. However, the Exchange also states that for purposes of this filing, CDOs, CBOs, and CLOs are excluded from the term Private ABS/MBS. CDOs/CBOs/CLOs are distinguishable from ABS because they are collateralized by bank loans or by corporate or government fixed income securities and not by consumer and other loans made by non-bank lenders, including student loans.

- 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.

With respect to Fixed Income Instruments, the Fund may invest, without limitation, in U.S. dollar-denominated securities and instruments of foreign issuers and securities denominated in foreign currencies.

The Fund may invest in to-be-announced transactions. The Fund may also purchase and sell securities on a when-issued, delayed delivery or forward commitment basis. 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 Fund may also hold cash and cash equivalents.⁹

The Fund may invest in, to the extent permitted by Section 12(d) of the 1940 Act or exemptive relief therefrom, other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, including other exchange-traded funds (“ETFs”).¹⁰

⁹ For purposes of this filing, the term “cash equivalents” includes the short-term instruments enumerated in Commentary .01(c) to NYSE Arca Rule 8.600-E.

¹⁰ The Exchange states that for purposes of this filing, the term “ETFs” are Investment Company Units (as described in NYSE Arca Rule 5.2-E(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100-E); and Managed Fund Shares (as described in NYSE Arca Rule 8.600-E). All ETFs will be listed and traded on national

B. Use of Derivatives by the Fund

The Exchange states that the Fund may invest in forwards to (1) provide exposure to Fixed Income Instruments, (2) enhance returns, (3) manage portfolio duration, or (4) manage the risk of securities price fluctuations. Investments in forwards will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. The Exchange states that, to limit the potential risk associated with such transactions, the Fund may enter into offsetting transactions or segregate or " earmark " assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees and in accordance with the 1940 Act or as permitted by applicable Commission guidance. In addition, the Fund has included risk disclosure in its offering documents, including leveraging risk.¹¹

According to the Exchange, the Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the Fund's use of forwards. The Exchange states that the Adviser understands that market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. Further, according to the Exchange, the Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem Shares at their net asset value ("NAV"), which the Exchange states should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

securities exchanges. According to the Exchange, while the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

¹¹ The Exchange states that leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of forwards, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.

C. Application of Generic Listing Requirements

The Exchange states that the proposed changes described below will result in the portfolio for the Fund not meeting all of the “generic” listing requirements of Commentary .01 to NYSE Arca Rule 8.600-E applicable to the listing of Managed Fund Shares. The Exchange states that the Fund’s portfolio will meet all requirements of Commentary .01 to NYSE Arca Rule 8.600-E except for those set forth in Commentary .01(b)(1),¹² Commentary .01(b)(4)¹³ and Commentary .01(b)(5).¹⁴

According to the Exchange, the Fund’s portfolio will not comply with the requirement in Commentary .01(b)(1) to Rule 8.600-E that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of \$100 million or more. Instead, the Exchange proposes that components, excluding Private ABS/MBS and CDOs/CBOs/CLOs, that in the aggregate account for at least 50% of the fixed income weight of the portfolio, each shall have a minimum original principal amount outstanding of \$50 million or more. Investments in Private ABS/MBS and

¹² Commentary .01(b)(1) requires that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each have a minimum original principal amount outstanding of \$100 million or more.

¹³ Commentary .01(b)(4) requires that component securities that in aggregate account for at least 90% of the fixed income weight of the portfolio must be either (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

¹⁴ Commentary .01(b)(5) provides that non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the portfolio.

CDOs/CBOs/CLOs will not be subject to a required minimum original principal amount outstanding.

The Fund will not comply with the requirements in Commentary .01(b)(4) to Rule 8.600-E that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio meet one of the criteria specified in Commentary .01(b)(4).¹⁵ Instead, the Exchange proposes that: (1) the Fund's investments in fixed income securities that do not meet any of the criteria in Commentary .01(b)(4) will not exceed 10% of the total assets of the Fund, excluding Private ABS/MBS and CDOs/CBOs/CLOs; (2) Private ABS/MBS, which will be limited to 20% of the Fund's total assets, will not be required to comply with the criteria in Commentary .01(b)(4); and (3) CDOs/CBOs/CLOs, which will be subject to a separate limit of 20% of the Fund's total assets, will also not be required to comply with the criteria in Commentary .01(b)(4).

In addition, the Exchange states that the Fund's portfolio will not comply with the requirement in Commentary .01(b)(5) to Rule 8.600-E that investments in non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities (i.e., Private ABS/MBS) not account, in the aggregate, for more than 20% of the weight of the portfolio. Instead, the Fund will not invest more than 20% of the Fund's total assets in Private ABS/MBS or more than 20% of the Fund's total assets in U.S. or foreign CDOs/CBOs/CLOs.

The Exchange notes that, other than Commentary .01(b)(1), Commentary .01(b)(4), and Commentary .01(b)(5) to Rule 8.600-E, the Fund's portfolio will meet all other requirements of Rule 8.600-E.

¹⁵ See supra note 13.

II. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁶ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,¹⁷ 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.

According to the Exchange, other than Commentary .01(b)(1), (b)(4) and (b)(5) to Rule 8.600-E, the Fund will meet all other requirements of NYSE Arca Rule 8.600-E, and the Shares of the Fund will conform to the continued listing criteria under NYSE Arca Rule 8.600-E.

As discussed above, the Fund will not comply with the requirement in Commentary .01(b)(1) to Rule 8.600-E that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each have a minimum original principal amount outstanding of \$100 million or more. Instead, the Exchange proposes that components of the portfolio, excluding Private ABS/MBS and CDOs/CBOs/CLOs, that in the aggregate account for at least 50% of the fixed income weight of the portfolio, each shall have a minimum original principal amount outstanding of \$50 million or more. Private ABS/MBS and CDOs/CBOs/CLOs will not be subject to a requirement for a minimum original principal amount outstanding. The Exchange represents that at least 50% of the fixed income weight of the Fund's portfolio will still be

¹⁶ 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).

¹⁷ 15 U.S.C. 78f(b)(5).

required to have a substantial minimum original principal amount outstanding.¹⁸ The Exchange asserts that not subjecting Private ABS/MBS and CDOs/CBOs/CLOs to a standard for minimum original principal amount outstanding would allow the Fund to invest in a larger variety of Private ABS/MBS and CDOs/CBOs/CLOs, which would help the Fund meet its investment objective and diversify its holdings in such securities.¹⁹ In addition, the Exchange states that the Adviser has represented that, with respect to the Fund's investments in CDOs/CBOs/CLOs, the Fund will invest principally in the senior-most tranches of these securities, generally those with an AAA investment rating that have first claim in the capital structure and that have less sensitivity to the credit risk of the underlying assets (e.g., bank loans or commercial real estate).²⁰ The Commission notes that it has previously approved the listing of other series of Managed Fund Shares for which the fixed income weight of the portfolio does not comply with Commentary .01(b)(1) to Rule 8.600-E.²¹

In addition, the Fund will not comply with the requirements in Commentary .01(b)(4) to Rule 8.600-E that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio meet one of the criteria specified in Commentary .01(b)(4).²² Instead, the Exchange proposes to allow up to 50% of the Fund's portfolio to be composed of fixed income securities which would not satisfy the criteria in Commentary .01(b)(4).

Specifically, the Exchange proposes that: (1) the Fund may invest up to 10% of its total assets in

¹⁸ See Notice, supra note 3, at 28064-65.

¹⁹ See id. at 28065.

²⁰ See id.

²¹ See, e.g., Securities Exchange Act Release No. 86841 (August 30, 2019), 84 FR 47024 (September 6, 2019) (SR-NYSEArca-2019-38) (Order Approving a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, To Amend the Listing Rule Applicable to Shares of the Aware Ultra-Short Duration Enhanced Income ETF).

²² See supra note 13.

in fixed income securities that do not satisfy the criteria of Commentary .01(b)(4), excluding Private ABS/MBS and CDOs/CBOs/CLOs; (2) the Fund's investments in Private ABS/MBS, which may constitute up to 20% of the Fund's total assets, will not be required to satisfy the criteria of Commentary .01(b)(4); and (3) the Fund's investments in CDOs/CBOs/CLOs, which may constitute up to 20% of the Fund's total assets, also will not be required to satisfy the criteria of Commentary .01(b)(4). The Commission notes that it has previously approved the listing of other series of Managed Fund Shares with similar investment strategies that are permitted to hold a similar percentage of fixed income securities that do not meet one of the criteria set forth in Commentary.01(b)(4).²³

Finally, the Fund will not comply with the requirement in Commentary .01(b)(5) to Rule 8.600-E that investments in non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities (i.e., Private ABS/MBS) not account, in the aggregate, for more than 20% of the weight of the portfolio. Instead, the Fund will not invest more than 20% of the Fund's total assets in Private ABS/MBS or more than 20% of the Fund's total assets in U.S. or foreign CDOs/CBOs/CLOs. The Exchange believes that these limitations will help the Fund maintain portfolio diversification and reduce manipulation risk.²⁴ In addition, the Exchange states that the Fund's investment in CDOs/CBOs/CLOs will be subject to the Fund's liquidity procedures as adopted by the Trust's Board of Trustees, and the Adviser does not expect that such investments will have any material impact on the liquidity of the Fund's

²³ See, e.g., Securities Exchange Act Release No. 87576 (November 20, 2019), 84 FR 65206 (November 26, 2019) (SR-NYSEArca-2019-14) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Permitted Investments of the PGIM Ultra Short Bond ETF) (“PGIM Ultra Short Bond ETF Order”).

²⁴ See Notice, supra note 3, at 28065.

investments.²⁵ The Commission notes that it has previously approved the listing of other series of Managed Fund Shares that are permitted to hold private asset backed and mortgage-backed securities in excess of the levels permitted under Commentary .01(b)(5).²⁶

The Exchange represents that all statements and representations made in the filing regarding (1) the description of the portfolio holdings or reference assets, (2) limitations on portfolio holdings or reference assets, or (3) the applicability of Exchange listing rules specified in the filing shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange. In addition, the Exchange states that the issuer must notify the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor²⁷ for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendment No. 1. For the foregoing reasons, the Commission finds that the

²⁵ See id.

²⁶ See, e.g., PGIM Ultra Short Bond ETF Order, supra note 23; Securities Exchange Act Release No. 87410 (October 28, 2019), 84 FR 58750 (November 1, 2019) (SR-NYSEArca-2019-33) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, Regarding Changes to Investments of the First Trust TCW Unconstrained Plus Bond ETF).

²⁷ The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will “surveil” for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR-BATS-2016-04). In the context of this representation, it is the Commission’s view that “monitor” and “surveil” both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view “monitor” as a more or less stringent obligation than “surveil” with respect to the continued listing requirements.

proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act²⁸ and the rules and regulations thereunder applicable to a national securities exchange.

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁹ that the proposed rule change (SR-NYSEArca-2020-37), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

J. Matthew DeLesDernier,
Assistant Secretary.

²⁸ 15 U.S.C. 78f(b)(5).

²⁹ Id.

³⁰ 17 CFR 200.30-3(a)(12).

[FR Doc. 2020-13207 Filed: 6/18/2020 8:45 am; Publication Date: 6/19/2020]