The Postal Service filed the following material in conjunction with its Notice, along with public (redacted) versions of supporting financial information:

• Attachment 1—a redacted copy of the Agreement;

• Attachment 2—a certified statement required by 39 CFR 3015.5(c)(2);

• Attachment 3—a redacted copy of Governors' Decision No. 10–1; and

• Attachment 4—an application for non-public treatment of materials filed under seal.

Functional equivalency. The Postal Service asserts that the Agreement is substantially similar to the baseline agreement filed in Docket No. CP2010–36 because it shares similar cost and market characteristics and meets criteria in Governors' Decision No. 10–1 concerning attributable costs. *Id.* at 3. The Postal Service further asserts that the functional terms of the Agreement and the baseline agreement are the same and the benefits are comparable. *Id.* at 3–4. It states that prices offered under the Agreement may differ due to postage commitments and when the Agreement is signed (due to updated costing information), but asserts that these differences do not alter the functional equivalency of the Agreement and the baseline agreement. *Id.* at 4. The Postal Service also identifies differences between the terms of the two agreements, but asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the Agreement.[3] *Id.* at 4–7.

III. Notice of Proceeding

The Commission establishes Docket No. CP2013–49 for consideration of matters raised by the Postal Service's Notice. Interested persons may submit comments on whether the Agreement is consistent with the requirements of 39 CFR 3015.5 and the policies of 39 U.S.C. 3632 and 3633. Comments are due no later than February 19, 2013. The public portions of this filing can be accessed via the Commission's Web site, *http://www.prc.gov.* Information on how to obtain access to material filed under seal appears in 39 CFR 3007.50.

The Commission appoints Curtis E. Kidd to serve as Public Representative in the captioned proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2013–49 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in this proceeding are due no later than February 19, 2013.

3. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–03505 Filed 2–14–13; 8:45 am]

BILLING CODE 7710–FW–P

[3] Differences include a new ''Whereas'' paragraph, numerous revisions to existing Articles, and five new Articles. *Id.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68871; File No. SR–NYSEArca–2012–138]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change To List and Trade PIMCO Foreign Currency Strategy Exchange-Traded Fund Under NYSE Arca Equities Rule 8.600

February 8, 2013.

I. Introduction

On December 6, 2012, 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 Foreign Currency Strategy 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 26, 2012.[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 Management Company LLC (''PIMCO'' or ''Adviser''). PIMCO Investments LLC serves as the distributor for the Fund. State Street Bank & Trust Co. serves as the custodian and transfer agent for the Fund. The Exchange represents that the Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.[5]

Principal Investment Strategies

The Fund will seek maximum total return,[6] consistent with prudent investment management. The Fund will invest under normal circumstances[7] at least 80% of its assets in currencies of, or Fixed Income Instruments[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68476 (December 19, 2012), 77 FR 76121 (''Notice'').

[4] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On October 28, 2011, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (''Securities Act'') and under the 1940 Act relating to the Fund (File Nos. 333–155395 and 811–22250) (''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).

[5] *See* Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that in the event (a) the Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new 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 ''total return'' sought by the Fund will consist of income and 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.

[7] The term ''under normal 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.

[8] ''Fixed Income Instruments,'' as used generally in the Registration Statement, includes: 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

denominated in the currencies of, foreign (non-U.S.) countries, including, but not limited to, a combination of short-term Fixed Income Instruments, money market securities, and currency forwards [9] backed by high-quality, low duration securities (''80% Holdings'').[10] The Fund will seek exposure to foreign (non-U.S.) currencies likely to outperform the U.S. dollar over the long-term. Assets not invested in the 80% Holdings may be invested in other types of Fixed Income Instruments (*e.g.,* Fixed Income Instruments denominated in U.S. dollars).

The Fund may invest up to 50% of its total assets in securities and instruments that are economically tied to emerging market countries, which may include assets constituting the 80% Holdings.[11] PIMCO will select the Fund's country and currency composition based on its evaluation of relative interest rates, inflation rates, exchange rates, monetary and fiscal policies, trade and current account balances, legal and political developments, and other specific factors PIMCO believes to be relevant. The Fund will normally limit its exposure to a single non-U.S. currency (from currency holdings or investments in securities denominated in that currency) to 20% of its total assets.

The average portfolio duration of the Fund will vary based on PIMCO's forecast for interest rates and, under normal market conditions, will vary from zero to three years.[12] The Fund may invest in both high yield securities (''junk bonds'') rated Ba, or investment grade securities rated Baa or higher, by Moody's Investors Service, Inc. (''Moody's''), or equivalently rated by Standard & Poor's Ratings Services (''S&P'') or Fitch, Inc. (''Fitch''), or, if unrated, determined by PIMCO to be of comparable quality.[13] The Fund currently anticipates that at least 50% of issues of Fixed Income Instruments held by the Fund will be rated investment grade or determined by PIMCO to be of comparable quality.[14] The Fund is non-diversified, which means that it may invest its assets in a smaller number of issuers than a diversified fund.

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 up to 10% of its assets in mortgage-backed securities or in other asset-backed securities, although this limitation does not apply to securities issued or guaranteed by Federal agencies or U.S. government sponsored instrumentalities.

The Fund may purchase or sell securities on a when-issued, delayed delivery, or forward commitment basis and may engage in short sales. 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).

Investment Selection Techniques

In selecting investments 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 asset selection techniques. The proportion of the Fund's investments in securities 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. In seeking to identify undervalued currencies, PIMCO may consider many factors, including but not limited to longer-term analysis of relative interest rates, inflation rates, real exchange rates, purchasing power parity, trade account balances, and current account balances, as well as other factors that influence exchange rates such as flows, market technical trends, and government policies. With respect to fixed income investing, PIMCO will attempt to identify areas of the bond market that are undervalued relative to the rest of the market. PIMCO identifies these areas by grouping Fixed Income Instruments into sectors such as money markets, governments, corporates, mortgages, asset-backed, and international. Sophisticated proprietary software then will assist in evaluating sectors and pricing specific investments. Once investment opportunities are identified, PIMCO will shift assets among sectors depending upon changes in relative valuations, credit spreads, and other factors.

Additional Information Regarding Principal Investment Strategies [15]

The Fund will invest in currencies and Fixed Income Instruments that are

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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. Only those Fixed Income Instruments that are denominated in foreign (non-U.S.) currencies count towards the 80% Holdings (as defined above).

[9] A forward foreign currency exchange contract involves an obligation to purchase or sell a specific currency at a future date at a price set at the time of the contract.

[10] In connection with its holdings in Fixed Income Instruments, the Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. PIMCO's Counterparty Risk Committee evaluates the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, PIMCO credit analysts evaluate each approved counterparty using various methods of analysis, including company visits, earnings updates, the broker-dealer's reputation, PIMCO's past experience with the broker-dealer, market levels for the counterparty's debt and equity, the counterparty's liquidity and its share of market participation.

[11] PIMCO generally considers an instrument 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 is a currency of an emerging market country. PIMCO has broad discretion to identify countries that it considers to qualify as emerging markets. In making investments in emerging market instruments, the Fund emphasizes those countries with relatively low gross national product per capita and with the potential for rapid economic growth. Emerging market countries are generally located in Asia, Africa, the Middle East, Latin America, and Eastern Europe.

[12] Duration is a measure used to determine the sensitivity of a security's price to changes in interest rates. The longer a security's duration, the more sensitive it will be to changes in interest rates.

[13] Securities rated Ba or lower by Moody's, or equivalently rated by S&P or Fitch, are sometimes referred to as ''high yield securities'' or ''junk bonds,'' while securities rated Baa or higher are referred to as ''investment grade.'' Unrated securities may be less liquid than comparably rated securities and involve the risk that the portfolio manager may not accurately evaluate the security's comparative credit rating. To the extent that the Fund invests in unrated securities, the Fund's success in achieving its investment objective may depend more heavily on the portfolio manager's creditworthiness analysis than if the Fund invested exclusively in rated securities. *See* note 14, *infra.*

[14] PIMCO utilizes sophisticated proprietary techniques in its creditworthiness analysis of unrated securities similar to the processes utilized by Moody's, S&P, and Fitch in their respective analyses of rated securities. For example, in making a ''comparable quality'' determination for an unrated security, PIMCO may evaluate the likelihood of payment by the obligor, the nature and provisions of the debt obligation, and the protection afforded by, and relative position of, the debt obligation in the event of bankruptcy, reorganization, or other arrangement under laws affecting creditors' rights. Upon consideration of these and other factors, PIMCO may determine that an unrated security is of comparable quality to rated securities in which the Fund may invest consistent with the Fund's credit quality guidelines described above.

[15] Many of the investment strategies of the Fund are discretionary, which means that PIMCO can

Continued

economically tied to foreign (non-U.S.) 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 will invest in foreign currencies and may invest in Fixed Income Instruments denominated in foreign (non-U.S.) currencies or receive revenues in foreign currencies, and may engage in foreign currency transactions on a spot (cash) basis and enter into forward foreign currency exchange contracts.[16] A forward foreign currency exchange contract, which involves an obligation to purchase or sell a specific currency at a future date at a price set at the time of the contract, reduces the Fund's exposure to changes in the value of the currency it will deliver and increases its exposure to changes in the value of the currency it will receive for the duration of the contract. Certain foreign currency transactions may also be settled in cash rather than the actual delivery of the relevant currency. The effect on the value of the Fund is similar to selling securities denominated in one currency and purchasing securities denominated in another currency. A contract to sell foreign currency would limit any potential gain which might be realized if the value of the hedged currency increases. 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. Suitable hedging transactions may not be available in all circumstances and there can be no assurance that the Fund will engage in such transactions at any given time or from time to time.

The Fund may invest in variable and floating rate debt securities, which are securities that pay interest at rates that adjust whenever a specified interest rate changes or that reset on predetermined dates (such as the last day of a month or calendar quarter). To the extent the Fund invests in variable and floating rate debt securities that are deemed illiquid, the Fund will limit such holdings to an amount consistent with the 15% limitation on illiquid securities discussed below. The Fund may invest in floating rate debt instruments (''floaters'') and engage in credit spread trades. Variable and floating rate securities generally are less sensitive to interest rate changes, but may decline in value if their interest rates do not rise as much, or as quickly, as interest rates in general. Conversely, floating rate securities will not generally increase in value if interest rates decline.

The Fund may invest in bank capital securities. Bank capital securities are issued by banks to help fulfill their regulatory capital requirements. There are two common types of bank capital: Tier I and Tier II. Bank capital is generally, but not always, of investment grade quality. Tier I securities are typically exchange-traded and often take the form of trust preferred securities. Tier II securities are commonly thought of as hybrids of debt and preferred stock. Tier II securities are typically traded over-the-counter, are often perpetual (with no maturity date), are callable, and have a cumulative interest deferral feature. This means that under certain conditions, the issuer bank can withhold payment of interest until a later date. However, such deferred interest payments generally earn interest.

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 and Non-Principal Investment Strategies

For the purpose of achieving income, the Fund may lend its portfolio securities to brokers, dealers, and other financial institutions, provided that a number of conditions are satisfied, including that the loan is fully collateralized. When the Fund lends portfolio securities, its investment performance will continue to reflect changes in the value of the securities loaned, and the Fund will also receive a fee or interest on the collateral. Cash collateral received by the Fund in securities lending transactions may be invested in short-term liquid Fixed Income Instruments or in money market or short-term mutual funds or similar investment vehicles, including affiliated money market or short-term mutual 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 total assets. The Fund may invest in 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.

Subject to the restrictions and limitations of the 1940 Act, the Fund may elect to pursue its investment objective either by investing directly in securities or instruments, or by investing in one or more underlying investment vehicles or companies that have substantially similar investment objectives and policies as the Fund.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment). Certain financial instruments, including, but not limited to, Rule 144A securities, loan participations and assignments, delayed funding loans, revolving credit facilities,[17] and fixed- and floating-rate loans[18] will be included in the 15% limitation on illiquid securities. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and the Fund will consider taking appropriate steps in order to maintain adequate

decide from time to time whether to use them or not.

[16] The Fund will limit its investments in currencies to those currencies with a minimum average daily foreign exchange turnover of USD $1 billion, as determined by the Bank for International Settlements (''BIS'') Triennial Central Bank Survey. As of the most recent BIS Triennial Central Bank Survey, at least 52 separate currencies had minimum average daily foreign exchange turnover of USD $1 billion. For a list of eligible BIS currencies, see *www.bis.org.*

[17] The Fund may enter into, or acquire participations in, delayed funding loans and revolving credit facilities, in which a lender agrees to make loans up to a maximum amount upon demand by the borrower during a specified term. These commitments may have the effect of requiring the Fund to increase its investments in a company at a time when it might not otherwise decide to do so (including at a time when the company's financial condition makes it unlikely that such amounts will be repaid). To the extent that the Fund is committed to advance additional funds, it will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Fund's Board of Trustees in an amount sufficient to meet such commitments.

[18] The Fund may invest in fixed- and floating-rate loans, which investments generally will be in the form of loan participations and assignments of portions of such loans. Participations and assignments involve special types of risk, including credit risk, interest rate risk, liquidity risk, and the risks of being a lender.

liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

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 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.

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 securities, including securities issued or guaranteed by the U.S. government, its agencies, or instrumentalities.

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'').

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 (*i.e.,* 2X and 3X) of the Fund's broad-based securities market index (as defined in Form N–1A).[19]

The Fund will not invest in options contracts, futures contracts, or swap agreements, in accordance with the Trust's Exemptive Order.

Additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions, and taxes is included in the Notice and Registration Statement.[20]

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[21] and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[23] 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,[24] 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 Portfolio Indicative Value (''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 Trading Session.[25] On each business day before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio,[26] as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of the net asset value (''NAV'') at the end of the business day.[27] The NAV of the Fund's Shares will be calculated once daily Monday through Friday as of the close of trading on the New York Stock Exchange (generally, 4:00 p.m. Eastern Time). 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 information regarding 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 Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Price information for the debt securities and other financial instruments held by the Fund will be available through major market data vendors. Further, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange via the National Securities Clearing Corporation. The basket represents one ''Creation Unit'' of the Fund.

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 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.[28] In addition, the Exchange will halt trading in the Shares under the specific

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[19] The Exchange represents that the Fund's broad-based securities market index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

[20] *See supra,* notes 3 and 4, respectively.

[21] 15 U.S.C. 78f.

[22] 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).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[25] According to the Exchange, several major market data vendors display or make widely available PIVs taken from CTA or other data feeds.

[26] 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 and financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

[27] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day. The Web site information will be publicly available at no charge.

[28] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

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 or the financial instruments constituting 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.[29] 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.[30] The Exchange represents that the Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.[31] The Commission notes that the Adviser's personnel who make decisions on the Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.[32] 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-public information regarding the actual components of the portfolio.[33] 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 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 ISG, and the Exchange would be able to obtain surveillance information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into 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 has in place surveillance procedures that are adequate to properly monitor trading in 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 (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will 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 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.

(5) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act,[34] as provided by NYSE Arca Equities Rule 5.3.

(6) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment). 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.

(7) The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

(8) The Fund will normally limit its exposure to a single non-U.S. currency (from currency holdings or investments in securities denominated in that currency) to 20% of its total assets. The Fund currently anticipates that at least 50% of issues of Fixed Income Instruments held by the Fund will be rated investment grade or determined by PIMCO to be of comparable quality. In addition, 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.

(9) 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 ISG. The Exchange would be able to obtain surveillance information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

(10) The Fund will not invest in options contracts, futures contracts, or swap agreements, in accordance with the Trust's Exemptive Order.

(11) 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 and description of the Fund, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[35] and the rules and

[29] 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.

[30] *See* NYSE Arca Equities Rule 8.600(d)(2)(C)(ii).

[31] *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; (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.

[32] *See* Commentary .06 to NYSE Arca Equities Rule 8.600.

[33] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[34] *See* 17 CFR 240.10A–3.

[35] 15 U.S.C. 78f(b)(5).

regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[36] that the proposed rule change (SR–NYSEArca–2012–138) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68901; File No. SR–CBOE–2013–018]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees Schedule

February 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') 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 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

The Exchange is proposing to amend the Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

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 Exchange 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 these 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 aspects 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 is proposing to amend its Fee Schedule. Specifically, the Exchange is proposing to increase the threshold in which it waives customer transaction fees, implement a $0.25 marketing fee for trading in SPY and QQQ options, and eliminate the complex order surcharge.

First, the Exchange is proposing to increase the threshold at which the Exchange waives the customer transaction fee in ''ETF, ETN and HOLDRs Options.'' Currently, the Exchange waives transaction fees for customer orders of 99 contracts or less in transactions in ETFs, ETNs, and HOLDRs options. Any order that is 100 contracts or more is charged a fee of $0.18. The Exchange is proposing to increase this threshold and waive transaction fees for customer orders of 249 contracts or less in these options. The Exchange will charge any leg of a complex orders in these options that exceeds 249 even if the leg is only partially executed below the 249 threshold. For orders 250 contracts and above, the Exchange will continue to charge a fee of $0.18. Corresponding edits will also be made to Footnote 9 in the Fees Schedule to reflect the change. Raising the threshold for which the Exchange will waive transaction fees will allow customers who engage in ETF, ETN and HOLDRs options trading the opportunity to pay lower fees for larger transactions and provide greater incentives for such trading. In addition, increasing this threshold will encourage more interaction with Exchange customers and encourage the direction of customer ETF, ETN and HOLDRs options orders to the Exchange.

Next, the Exchange is proposing to implement a $0.25 marketing fee for electronic trading in SPY and QQQ options. Currently, the Marketing Fee assessed on all Penny Pilot Exchange-Traded Fund (''ETF'') options is $0.25 per contract, with the exception of SPY and QQQ. The Exchange only charges a $0.25 fee per contract in SPY and QQQ options for qualifying complex orders that trade via the Exchange Complex Order Book against individual leg markets. The Exchange is proposing to amend the Fees Schedule to assess this $0.25 fee per contract on all qualifying orders whether simple or complex. This change will place SPY and QQQ on the same footing regarding the Marketing Fee as other options in the Penny Pilot classes. Other exchanges assess their marketing fees on SPY and QQQ.[3] To correspond with this proposed change, the Exchange also proposes to eliminate the ''Notes'' section of the ''Marketing Fee'' table of the Fees Schedule to reflect this change.[4]

Finally, the Exchange is proposing to eliminate the surcharge on complex orders. Currently, the Exchange has a $0.10 surcharge per contract for the electronic execution leg of a complex order in multiply-listed options that executes against a customer complex order. This surcharge is in addition to the other transaction fees. The Exchange is proposing to eliminate this surcharge. Eliminating the surcharge for complex orders will allow Trading Permit Holders (''TPHs'') who engage in complex order trading the opportunity to pay lower fees for such transactions and provide greater incentives for such trading. In addition, eliminating the $0.10 surcharge will encourage more interaction with Exchange customers.

Thus, the proposed changes are designed to attract greater order flow to the Exchange. This would bring greater liquidity to the market, which benefits all market participants. The propose changes are to take effect on February 1, 2013

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the

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[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Section II, ''Payment for Order Flow Fees,'' of the Nasdaq OMX PHLX (''Phlx'') Fee Schedule.

[4] The ''Notes'' section of the ''Marketing Fee'' table reads ''The marketing fee will not be assessed on electronic transactions in SPY and QQQ, except for electronic transactions resulting from AIM and complex orders that trade in either COA or COB (excluding complex orders that trade against the leg markets, on which the marketing fee will not be assessed). The marketing fee will continue to be assessed on open outcry transactions in SPY and QQQ.'' Because the Exchange proposes to assess the Marketing Fee to SPY and QQQ in the same manner as it applies to other Penny Pilot classes the SPY- and QQQ-specific specifications set out in the ''Notes'' section are no longer relevant and can be deleted.