

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86220; File No. SR-NYSEArca-2019-14)

June 27, 2019

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Relating to the Permitted Investments of the PGIM Ultra Short Bond ETF

On March 13, 2019, 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 make certain changes to the listing rule for shares (“Shares”) of the PGIM Ultra Short Bond ETF (“Fund”). The proposed rule change was published for comment in the Federal Register on April 2, 2019.³ On May 10, 2019, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁵ The Commission has received no comment letters on the proposal. The Commission is publishing this order to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 85430 (Mar. 27, 2019), 84 FR 12646 (Apr. 2, 2019) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 85829 (May 10, 2019), 84 FR 22221 (May 16, 2019). The Commission designated July 1, 2019, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

I. Description of the Proposal

A. The Fund and the Shares

According to the Exchange, the investment objective of the Fund is to seek total return through a combination of current income and capital appreciation, consistent with preservation of capital. The Fund seeks to achieve its investment objective by investing primarily in a portfolio of U.S. dollar denominated short-term fixed, variable and floating rate debt instruments. Under normal market conditions,⁷ the Fund invests at least 80% of its net assets (plus any borrowings for investment purposes) in a portfolio of financial instruments consisting of (1) the Principal Investment Instruments (as defined in the First Prior Order); and (2) derivatives (as described in the Prior Orders) that (a) provide exposure to such Principal Investment Instruments, or (b) are used to enhance returns, manage portfolio duration, or manage the risk of securities price fluctuations, as described in the Prior Orders.⁸

The Shares commenced trading on the Exchange on April 10, 2018, pursuant to the generic listing standards under Commentary .01 to NYSE Arca Rule 8.600-E (“Managed Fund Shares”).⁹ Since then, the Exchange has proposed – and the Commission has approved – two proposed rule changes to expand the permitted investments of the Fund beyond what is permitted

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

⁸ The terms “First Prior Order” and “Prior Orders” are defined infra at note 10.

⁹ A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2-E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

under the generic listing requirements.¹⁰ By the instant proposed rule change, the Exchange proposes to again amend the listing rule applicable to the Shares.

B. The Proposed Modifications to the Shares' Listing Rule

The Exchange proposes to amend two requirements of the Shares' current listing rule as set forth in the First Prior Order, namely the requirements that: (1) the Fund's investments in non-U.S. Government, non-agency, non-GSE and other privately issued asset backed securities (including mortgage-backed securities) ("Private ABS/MBS") are limited to 20% of the total assets of the Fund;¹¹ and (2) the Fund may invest only 10% of its total assets in fixed income securities that do not satisfy the criteria of Commentary .01(b)(4) to NYSE Arca Rule 8.600-E.¹²

¹⁰ See Securities Exchange Act Release Nos. 83319 (May 24, 2018), 83 FR 25097 (May 31, 2018) (SR-NYSEArca-2018-15) ("First Prior Order"); and 84818 (December 13, 2018) (SR-NYSEArca-2018-75) (together with the First Prior Order, "Prior Orders").

¹¹ At the time the proposed rule change was filed, Commentary .01(b)(5) to NYSE Arca Rule 8.600-E provided that non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities components of a portfolio may not account, in the aggregate, for more than 20% of the weight of *the fixed income portion* of the portfolio. Recently, however, the Exchange amended Commentary .01(b)(5) to NYSE Arca Rule 8.600-E, and it now provides that non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities components of a portfolio may not account, in the aggregate, for more than 20% of the weight of the portfolio. See Securities Exchange Act Release No. 86017 (June 3, 2019), 84 FR 26711 (June 7, 2019) (SR-NYSEArca-2019-06).

¹² Commentary .01(b)(4) requires that 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.

The Exchange proposes to modify the Fund's current limit on Private ABS/MBS by removing collateralized debt obligations ("CDOs")¹³ from the definition of Private ABS/MBS and by allowing the Fund to invest up to 20% of its total assets in CDOs. Therefore, the Exchange is proposing to allow up to 40% of the Fund's portfolio to be composed of what had previously been defined as Private ABS/MBS. The Exchange asserts that ability to invest up to 20% of the Fund's portfolio CDOs would help the Fund maintain portfolio diversification and would reduce manipulation risk.¹⁴ The Exchange argues that CDOs can be distinguished from asset backed securities ("ABS") because CDOs are collateralized by bank loans or by corporate or government fixed income securities, while ABS are collateralized by consumer and other loans (including student loans) made by non-bank lenders.¹⁵ Additionally, the Exchange states that the Fund's investments in CDOs would be subject to the Fund's liquidity procedures, and that the Fund's investment adviser does not expect that such investments would materially impact the liquidity of the Fund's investments.¹⁶

Additionally, with respect to the requirement the Fund may invest only up to 10% of its total assets in fixed income securities that do not satisfy the criteria of Commentary .01(b)(4), the Exchange proposes that the Fund's Private ABS/MBS (which may constitute up to 20% of the

¹³ The Exchange defines CDOs as collateralized loan obligations ("CLOs") and collateralized bond obligations ("CBOs"). The Exchange defines CLOs as securities issued by a trust or other special purpose entity that are collateralized by a pool of loans by U.S. banks and participations in loans by U.S. banks that are unsecured or secured by collateral other than real estate. The Exchange defines CBOs as securities issued by a trust or other special purpose entity that are backed by a diversified pool of fixed income securities issued by U.S. or foreign governmental entities or fixed income securities issued by U.S. or corporate issuers.

¹⁴ See Notice, supra note 3, 84 FR at 12647-48.

¹⁵ See id. at 12647, n.12.

¹⁶ See id. at 12648.

portfolio) and CDOs (which also may constitute up to 20% of the portfolio) would not count toward that 10% limit. As a result, up to 50% of the Fund’s fixed income securities might not satisfy the criteria in Commentary .01(b)(4). The Exchange argues that this alternative limit is appropriate because the criteria in Commentary .01(b)(4) “do not appear to be designed for structured finance vehicles such as Private ABS/MBS.”¹⁷

The Exchange proposes no other changes to the Shares’ listing rule.

II. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2019-14 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁸ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁹ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed

¹⁷ Id.

¹⁸ 15 U.S.C. 78s(b)(2)(B).

¹⁹ Id.

to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,” and “to protect investors and the public interest.”²⁰

The Commission asks that commenters address the sufficiency of the Exchange’s statements in support of the proposal, which are set forth in the Notice,²¹ in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views.

If the listing rule for the Shares were amended as proposed, would the listing rule continue to ensure that a substantial portion of the Fund’s portfolio consists of fixed income securities for which information is publicly available? If not, are there reasons why it may not be necessary that information be publicly available for Private ABS/MBS and CDOs (as distinguished from other types of fixed income securities)?

Would the proposed increased investment in Private ABS/MBS and CDOs by the Fund increase the susceptibility of the Shares to manipulation? If so, why; if not, why not? If the Fund’s permitted investments were expanded to the extent proposed, would any other restrictions on the Fund’s permitted investments be appropriate in order for the proposed rule change to be consistent with Section 6(b)(5) of the Act?

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written

²⁰ 15 U.S.C. 78f(b)(5).

²¹ See Notice, supra note 3.

views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²²

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

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. Please include File Number SR-NYSEArca-2019-14 on the subject line.

²² Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2019-14. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-NYSEArca-2019-14 and should be submitted by [insert date 21 days from date of publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

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

Eduardo A. Aleman
Deputy Secretary

²³ 17 CFR 200.30-3(a)(57).