

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-84486; File No. SR-NYSEArca-2018-75)

October 25, 2018

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Regarding Certain Investments of the PGIM Ultra Short Bond ETF

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 12, 2018, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes certain changes regarding investments of the PGIM Ultra Short Bond ETF (the “Fund”), a series of PGIM ETF Trust (the “Trust”), and shares of which are currently listed and traded on the Exchange under NYSE Arca Rule 8.600-E (“Managed Fund Shares”). The proposed change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the

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<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.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes certain changes, described below under “Application of Generic Listing Requirements,” regarding investments of the Fund. The shares (“Shares”) of the Fund are currently listed and traded on the Exchange under Commentary .01 to NYSE Arca Rule 8.600-E,<sup>4</sup> which provides generic criteria applicable to the listing and trading of Managed Fund Shares.<sup>5</sup> The Commission has previously approved a proposed rule change regarding certain changes that would 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.<sup>6</sup>

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<sup>4</sup> Shares of the Fund commenced trading on the Exchange on April 10, 2018 pursuant to Commentary .01 to NYSE Arca Rule 8.600-E.

<sup>5</sup> 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) (the “1940 Act”) 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.

<sup>6</sup> See Amendment No. 1 to SR-NYSEArca-2018-15, available at <https://www.sec.gov/comments/sr-nysearca-2018-15/nysearca201815-3510337-162292.pdf> (“Prior Amendment”); Securities Exchange Act Release No. 83319 (May 24, 2018), 83 FR 25097 (May 31, 2018) (SR-NYSEArca-2018-15), (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF Under NYSE Arca Rule 8.600-E) (“Approval Order” and, together with the Prior Amendment, the “Prior Releases”). The Prior Releases stated that the Fund’s portfolio would meet all requirements of

PGIM Investments LLC (the “Adviser”) is the investment adviser for the Fund. PGIM Fixed Income (the “Subadviser”), a unit of PGIM, Inc., is the subadviser to the Fund. The Adviser and the Subadviser are indirect wholly-owned subsidiaries of Prudential Financial, Inc.<sup>7</sup>

As stated in the Prior Releases, the Fund may invest in derivatives to (i) provide exposure to the “Principal Investment Instruments” (as defined in the Prior Releases), and (ii) enhance returns, manage portfolio duration, or manage the risk of securities price fluctuations.

Derivatives that the Fund may enter into include only: over-the-counter (“OTC”) deliverable and non-deliverable foreign exchange forward contracts; listed futures contracts on one or more Principal Investment Instruments securities (including Treasury securities and foreign government securities), indices relating to one or more Principal Investment Instruments, interest rates, financial rates and currencies; listed or OTC options (including puts or calls) or swaptions (i.e., options to enter into a swap) on one or more Principal Investment Instruments, indices relating to one or more Principal Investment Instruments, interest rates, financial rates, currencies and futures contracts on one or more Principal Investment Instruments; and listed or OTC swaps (including total return swaps) on securities, indices relating to one or more Principal Investment Instruments, interest rates, financial rates, currencies and debt and credit default

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Commentary .01 to NYSE Arca Rule 8.600-E except for those set forth in Commentary .01(a)(1), Commentary .01(b)(4) and Commentary .01(b)(5).

<sup>7</sup> The Trust is registered under the 1940 Act. On March 26, 2018, the Trust filed with the Commission Pre-Effective Amendment No. 1 to the Trust’s registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”), and under the 1940 Act relating to the Fund (File Nos. 333-222469 and 811-23324) (“Registration Statement”). The Trust will file an amendment to the Registration Statement as necessary to conform to the representations in this filing. The description of the operation of the Trust and the Fund herein is based, in part, on the 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. 31095 (June 24, 2014) (File No. 812-14267).

swaps on single names, baskets and indices on one or more Principal Investment Instruments (both as protection seller and as protection buyer).<sup>8</sup>

Investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies.

#### Application of Generic Listing Requirements

The Exchange proposes that up to 50% of the Fund's assets (calculated as the aggregate gross notional value) may be invested in OTC derivatives, including forwards, OTC options and OTC swaps, that are used to reduce currency, interest rate, credit or duration risk arising from the Fund's investments (that is, "hedge"). The Fund's investments in OTC derivatives, other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate, credit or duration risk will be limited to 20% of the assets in the Fund's portfolio, calculated as the aggregate gross notional value of such OTC derivatives.

The Exchange is submitting this proposed rule change because the change described in the preceding paragraph would not conform to the Exchange's representations regarding the Fund's portfolio in the Prior Amendment. In the Prior Amendment, the Exchange stated that, other than Commentary .01(a)(1), Commentary .01(b)(4) and Commentary .01(b)(5), the Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600-E. However, the proposed change described in the preceding paragraph would not meet the requirements set forth in Commentary .01(e).<sup>9</sup> Specifically, the aggregate gross notional

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<sup>8</sup> Because the markets for the Principal Investment Instruments, or the Principal Investment Instruments themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure to Principal Investment Instruments.

<sup>9</sup> Commentary .01(e) to NYSE Arca Rule 8.600-E provides that a portfolio may hold OTC derivatives, including forwards, options and swaps on commodities, currencies and financial instruments (e.g., stocks, fixed income, interest rates, and volatility) or a basket

value of the Fund's investments in OTC derivatives may exceed 20% of Fund assets, calculated as the aggregate gross notional value of such OTC derivatives.

The Adviser and Subadviser believe that it is important to provide the Fund with additional flexibility to manage risk associated with its investments. Depending on market conditions, it may be critical that the Fund be able to utilize available OTC derivatives for this purpose to attempt to reduce impact of currency, interest rate, credit or duration fluctuations on Fund assets. OTC derivatives provide the Fund with additional flexibility as well as a more precise means to effectively attempt to reduce currency, interest rate, credit or duration fluctuations on Fund assets. Generally, OTC derivatives can be customized to a greater degree than exchange-traded derivatives and can provide a better hedge on Fund assets as well as allow for more control over the duration of the hedge which can also mitigate trading costs. Therefore, the Exchange believes it is appropriate to apply a limit of up to 50% of the Fund's assets to the Fund's investments in OTC derivatives (calculated as the aggregate gross notional value of such OTC derivatives), including forwards, options and swaps, that are used for hedging purposes, as described above.<sup>10</sup>

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or index of any of the foregoing; however, on both an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in OTC derivatives. For purposes of calculating this limitation, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

<sup>10</sup> The Commission has previously approved an exception from requirements set forth in Commentary .01(e) relating to investments in OTC derivatives similar to those proposed with respect to the Fund in Securities Exchange Act Release No. 80657 (May 11, 2017), 82 FR 22702 (May 17, 2017) (SR-NYSEArca-2017-09) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Regarding Investments of the Janus Short Duration Income ETF Listed Under NYSE Arca Equities Rule 8.600). See also, Securities Exchange Act Release No. 84047 (September 6, 2018), 83 FR 46200 (September 12, 2018) (SR-NASDAQ-2017-128) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Shares of the Western Asset Total Return ETF), in which the Nasdaq

The Adviser and Subadviser represent that deviations from the generic requirements are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns because OTC derivatives generally provide the Fund with more flexibility to negotiate the exact exposure and duration that the Fund requires, and minimize trading costs because OTC derivatives are not subject to costs of rolling that are associated with listed derivatives. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in manner that is consistent with the principles of Section 6(b)(5) of the Act. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

Because the Fund, in furtherance of its investment objective, may invest a substantial percentage of its investments in Principal Investment Instruments with a maturity of one year or more, the 20% limit in Commentary .01(e) to Rule 8.600 could result in the Fund being unable to fully pursue its investment objective while attempting to sufficiently mitigate investment risks. The inability of the Fund to adequately hedge its holdings would effectively limit the Fund's ability to invest in certain instruments, or could expose the Fund to additional investment risk. For example, if the Fund's assets (on a gross notional value basis) were \$100 million and no listed derivative were suitable to hedge the Fund's risk, under the generic listing criteria, the Fund would be limited to holding up to \$20 million gross notional value in OTC derivatives (\$100 million \* 20%). Accordingly, the maximum amount the Fund would be able to invest in Principal Investment Instruments with a maturity of one year or more while remaining

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Stock Market LLC proposed that there would be no limit on the fund's investments in Interest Rate and Currency Derivatives, and that the aggregate weight of all OTC Derivatives other than Interest Rate and Currency Derivatives will not exceed 10% of the fund's assets).

adequately hedged would be \$20 million. The Fund then would hold \$60 million in assets that could not be hedged, other than with listed derivatives, which, as noted above, might not be sufficiently tailored to the specific instruments to be hedged.

In addition, by applying the 20% limitation in Commentary .01(e) to Rule 8.600, the Fund would be less able to protect its holdings from more than one risk simultaneously. For example, if the Fund's assets (on a gross notional basis) were \$100 million and the Fund held \$20 million in Principal Investment Instruments with a maturity of one year or more with two types of risks (e.g., duration and credit risk) which could not be hedged using listed derivatives, the Fund would be faced with the choice of either holding \$20 million aggregate gross notional value in OTC derivatives to mitigate one of the risks while passing the other risk to its shareholders, or, for example, holding \$10 million aggregate gross notional value in OTC derivatives on each of the risks while passing the remaining portion of each risk to the Fund's shareholders.

The Exchange accordingly believes that it is appropriate and in the public interest to approve continued listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(e) to Rule 8.600-E. The Exchange notes that, other than Commentary .01(e) and, as described in the Prior Releases, with the exception of the requirements of Commentary .01(a)(1), Commentary .01(b)(4) and Commentary .01(b)(5), the Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600-E.

The Adviser and Subadviser represent that the proposed change described above is consistent with the Fund's investment objective, and will further assist the Adviser and Subadviser to achieve such investment objective. Except for the changes noted above, all other

representations made in the Prior Releases remain unchanged. All terms referenced but not defined in this proposed rule change are defined in the Prior Releases.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act that an exchange have rules that are 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, in general, to protect investors and the public interest.

The Exchange believes that it is appropriate and in the public interest to allow the Fund, for hedging purposes only, to exceed the 20% limit in Commentary .01(e) to Rule 8.600 of portfolio assets that may be invested in OTC derivatives to a maximum of 50% of Fund assets (calculated as the gross notional value). As noted above, the Adviser and Subadviser believe that it is in the best interests of the Fund's shareholders for the Fund to be allowed to reduce the currency, interest rate, credit or duration risk arising from the Fund's investments using the most efficient financial instruments. While certain risks can be hedged via listed derivatives, OTC derivatives (such as forwards, options and swaps) can be customized to hedge against precise risks. Accordingly, the Adviser and Subadviser believe that OTC derivatives may frequently be a more efficient hedging vehicle than listed derivatives. Depending on market conditions, it may be critical that the Fund be able to utilize available OTC derivatives for this purpose to attempt to reduce impact of currency, interest rate, credit or duration fluctuations on Fund assets. Therefore, the Exchange believes that increasing the percentage limit in Commentary .01(e), as described above, to the Fund's investments in OTC derivatives, including forwards, options and swaps,



that are used specifically for hedging purposes would help protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the continued listing and trading of an actively-managed exchange-traded product that, through permitted use of an increased level of OTC derivatives above that currently permitted by the generic listing requirements of Commentary .01 to NYSE Arca Rule 8.600-E, will enhance competition among market participants, to the benefit of investors and the marketplace.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate a change to the Fund's investments similar to investments of another actively managed ETF, shares of which have been approved for Exchange listing and trading,<sup>11</sup> that principally holds fixed income securities, and that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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<sup>11</sup> See note 10, supra.

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2018-75 on the subject line.

##### 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-2018-75. 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-2018-75, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Eduardo A. Aleman  
Assistant Secretary

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