

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28370; 812-13381]

PIMCO Municipal Income Fund, et al.; Notice of Application

August 29, 2008

Agency: Securities and Exchange Commission ("Commission").

Action: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 19(b) of the Act and rule 19b-1 under the Act.

Summary of the Application: Applicants request an order to permit certain registered closed-end management investment companies to make a greater number of capital gains distributions to holders of shares of their auction market preferred stock than is permitted by section 19(b) of the Act and rule 19b-1 under the Act to the extent necessary to comply with Internal Revenue Ruling 89-81, 1989-1 C.B. 226 ("Revenue Ruling 89-81") under the Internal Revenue Code of 1986 (the "Code").

Applicants: PIMCO Municipal Income Fund, PIMCO Municipal Income Fund II, PIMCO Municipal Income Fund III, PIMCO California Municipal Income Fund, PIMCO California Municipal Income Fund II, PIMCO California Municipal Income Fund III, PIMCO New York Municipal Income Fund, PIMCO New York Municipal Income Fund II, PIMCO New York Municipal Income Fund III, PIMCO Municipal Advantage Fund Inc., PIMCO Corporate Income Fund, PIMCO Corporate Opportunity Fund, PIMCO High Income Fund, Nicholas-Applegate Convertible & Income Fund, Nicholas-Applegate Convertible & Income Fund II, PIMCO Floating Rate Income Fund, PIMCO Floating Rate Strategy Fund (collectively, the "Current Funds"), and Allianz Global Investors Fund Management LLC ("AGIFM").

Filing Dates: The application was filed on May 2, 2007 and amended on January 10, 2008 and August 29, 2008.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 26, 2008 and should be accompanied by proof of service on the applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington DC 20549-1090; Applicants, c/o AGIFM, 49th Floor, 1345 Avenue of the Americas, New York, NY 10105.

For Further Information Contact: Laura J. Riegel, Senior Counsel, at (202) 551-6873 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Room, 100 F Street, NE, Washington DC 20549-1520 (telephone (202) 551-5850).

Applicants' Representations:

1. Each of the Current Funds is organized as a Massachusetts business trust or Maryland corporation. Each of the Current Funds is registered under the Act as a closed-end management investment company. AGIFM, an investment adviser registered under the Investment Advisers Act of 1940, serves as the investment adviser to each Current Fund. Each Current Fund

has outstanding one class of common stock that trades on the New York Stock Exchange. Each Current Fund also has outstanding one or more series of preferred stock that pays out distributions at a rate generally set at periodic auctions (“Auction Market Preferred Stock”). Applicants request that the order apply to any registered closed-end management investment company currently advised or to be advised in the future by AGIFM (including any successor in interest)¹ or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with AGIFM that determines to rely on the requested relief in the future (such investment companies, the “Future Funds” and together with the Current Funds, the “Funds”).²

2. The board of directors or trustees of each Fund (a “Board”) has set or will set the initial dividend rate for each series of Auction Market Preferred Stock. Subsequently, each Fund pays or will pay dividends generally at seven day intervals (or at such other interval or intervals as the Fund’s organizational documents permit) on its Auction Market Preferred Stock at a rate determined by auction or, under certain circumstances, at the maximum rate.³

3. Each Fund will make annual distributions of realized long-term capital gains, if any, to both the holders of its common stock and Auction Market Preferred Stock. Distributions of long-term capital gains are designed to comply with Revenue Ruling 89-81. Depending upon the

¹ A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

² All existing registered closed-end management investment companies that currently intend to rely on the requested order are named as applicants. Any Future Fund that relies on the order will comply with the terms of the application.

³ The maximum rate for a series of Auction Market Preferred Stock has been established or will be established in the organizational documents creating the applicable series of Auction Market Preferred Stock, by reference to independent lending rates. The dividend rate will be the maximum rate when sufficient clearing bids have not been made in an auction or an auction is unable to be held for any reason on the date the auction is scheduled to occur.

amount of long-term capital gains realized in a fiscal year, the period of time between auctions, and the amount of the dividend as set by auction, each Fund may be required to make a greater number of long-term capital gains distributions to the holders of its Auction Market Preferred Stock than is permitted by section 19(b) and rule 19b-1 to comply with Revenue Ruling 89-81. Each Fund will make distributions of long-term capital gains to common stockholders in compliance with section 19(b) and rule 19b-1.

4. Applicants apply for an order pursuant to section 6(c) of the Act to exempt distributions of long-term capital gains that are made by the Funds to the holders of their Auction Market Preferred Stock in any one taxable year from the provisions of section 19(b) and rule 19b-1 to the extent necessary to comply with Revenue Ruling 89-81; provided that each Fund maintains in effect a distribution policy calling for periodic distributions to the holders of its Auction Market Preferred Stock (i.e., at seven day intervals or such other interval as specified in the organizational document creating such Auction Market Preferred Stock) at the rates determined by the Board at the time a series of Auction Market Preferred Stock is issued initially, and, thereafter pursuant to auction or at the maximum rate.

Applicants' Legal Analysis:

1. Section 19(b) of the Act generally makes it unlawful for any registered company to make long-term capital gains distributions more than once each year. Rule 19b-1 under the Act limits the number of capital gains dividends, as defined in the Code ("distributions"), that a registered investment company may make with respect to any one taxable year to one, plus a supplemental "clean up" distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Revenue Ruling 89-81 requires a regulated investment company that has two or more classes of stock to make designations of various types of income in the same proportion as the total dividends distributed to each class for the tax year. To satisfy the proportionate designation requirements of Revenue Ruling 89-81, whenever a Fund realizes a long-term capital gain with respect to a given tax year, the Fund designates the required proportionate share of such capital gain to be included in the dividends on its Auction Market Preferred Stock and common stock. Each Fund calculates the ratio by dividing the total dividends paid to holders of each series of its Auction Market Preferred Stock during a taxable year by the total dividends paid to all classes during that year. Each Fund then declares and distributes designated long-term capital gains dividends to the holders of its common stock and Auction Market Preferred Stock in proportion to this ratio.

3. Applicants state that under certain circumstances, a Fund will be able to comply with both Revenue Ruling 89-81 and rule 19b-1. For example, if the entire dividend payment set at auction distributes in a single dividend the full amount of long-term capital gains required to be distributed by Revenue Ruling 89-81, the Fund will comply with both Revenue Ruling 89-81 and rule 19b-1. Applicants assert, however, that depending upon the amount of a Fund's realized long-term capital gains in a taxable year, the period of time between auctions, the number of series of its Auction Market Preferred Stock outstanding, and the amount of the dividend set pursuant to an auction, a Fund may be required to make a greater number of long-term capital gains distributions to the holders of its Auction Market Preferred Stock under Revenue Ruling 89-81 than is permitted under section 19(b) and rule 19b-1. Applicants explain that while rule 19b-1 does give regulated investment companies some flexibility with respect to long-term capital gains distributions, a Fund could have used all of the exceptions provided by rule 19b-1 and, because it would need to make

additional distributions to the holders of series of its Auction Market Preferred Stock, be unable to comply with Revenue Ruling 89-81, section 19(b) and rule 19b-1 with respect to its Auction Market Preferred Stock.

4. Applicants submit that one of the concerns leading to the enactment of section 19(b) and the adoption of rule 19b-1 was that investors might be unable to distinguish between regular distributions of capital gains and distributions of investment income. In the case of Auction Market Preferred Stock, applicants state there is little chance for investor confusion since investors expect to receive only the cash amount representing the specified dividend distribution for any particular dividend period and the dividend rate is set through an auction process. With respect to each distribution to the holders of Auction Market Preferred Stock, applicants state that the Current Funds have adopted, and any Future Fund will adopt, procedures designed to comply with the disclosure requirements set forth in section 19(a) of the Act and rule 19a-1 under the Act. Applicants state that in accordance with such procedures, when the Current Funds or their service providers determine or reasonably estimate that a distribution will be comprised of a source other than the sources described in sections 19(a)(1) and 19(a)(2) of the Act, the Current Funds or their service providers include the source information required by rule 19a-1 on the wire confirmation that accompanies the electronic transfer of funds, which represents payment of the distribution. The Current Funds or their service providers include a request that the recipient send the source information to the beneficial shareholder if the recipient is other than the beneficial shareholder of the stock to which the notice relates.

5. Another concern underlying section 19(b) and rule 19b-1 is that frequent long-term capital gains distributions could facilitate improper distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming dividend

("selling the dividend") where the dividend results in an immediate corresponding reduction in net asset value and would be, in effect, a return of the investor's capital. Applicants state that the "selling the dividend" concern is not applicable to Auction Market Preferred Stock, which entitles a holder to a specified periodic dividend and no more, and like a debt security, is initially sold at a price based on its liquidation preference, credit quality, dividend rate and frequency of payment.

6. Applicants state that another concern leading to the adoption of section 19 and rule 19b-1, an increase in administrative costs, is not present because the Funds will make the same number of distributions with respect to their Auction Market Preferred Stock regardless of whether the characterization of such distributions is income or long-term capital gains.

7. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or class or classes of any persons, securities, or transactions from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicants believe that the requested relief satisfies this standard.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon
Acting Secretary