

are satisfied.<sup>43</sup> First, the offer and sale of the underlying debt securities must have been registered under the Securities Act of 1933 ("Securities Act").<sup>44</sup> This condition is designed so that participants in the security futures market have access to the detailed disclosure in the Securities Act registration statement for the debt securities underlying these security futures.

Second, the issuer of such securities must have at least one class of equity securities registered under Section 12(b) of the Exchange Act.<sup>45</sup> The debt securities of a wholly-owned subsidiary of a parent company with at least one class of equity securities registered under Section 12(b) of the Exchange Act may also underlie a security future.<sup>46</sup> This condition is designed so that there is public availability of information about the issuer and the securities, even though the particular debt securities underlying the security future are not registered under Section 12 of the Exchange Act. Because any security registered under Section 12(b) is listed on a national securities exchange, this condition assures that a national securities exchange is responsible for monitoring the listed securities of the issuer of the debt securities underlying a security future and enforcing compliance by that issuer with comprehensive listing standards of the applicable national securities exchange.

Third, the transfer agent for the debt securities underlying the security future must be registered under Section 17A of the Exchange Act.<sup>47</sup> This condition is designed so that the transfer agents providing services to issuers of debt securities underlying security futures are subject to SEC oversight and the requirements of the Exchange Act, including Section 17A, and the rules thereunder. Fourth, the indenture for the unregistered debt securities underlying the security future must be qualified under the Trust Indenture Act of 1939 ("Trust Indenture Act").<sup>48</sup> This condition is designed so that the specific protections afforded to debt holders under the Trust Indenture Act apply to debt securities that underlie security futures. The trust indenture for underlying debt securities registered under the Securities Act is qualified under the Trust Indenture Act at the

time of registration of those underlying debt securities.

As a result, by modifying the listing standard requirements such that the debt securities need not be registered under Section 12 of the Exchange Act, provided that the conditions set forth above are satisfied, the Commissions are increasing the types of debt securities on which security futures may be based while preserving the requirement that information important in making investment and trading decisions is available.

## II. Conclusion

For the reasons discussed above, the Commissions by order are jointly modifying the requirement in Section 6(h)(3)(D) of the Exchange Act<sup>49</sup> and the criteria specified in Section 2(a)(1)(D)(i)(III) of the CEA<sup>50</sup> to permit any security to underlie a security future, provided such security is eligible to underlie options traded on a national securities exchange.

In addition, for the reasons discussed above, the Commissions by order are jointly modifying the requirement specified in Section 6(h)(3)(A) of the Exchange Act<sup>51</sup> and the criterion specified in Section 2(a)(1)(D)(i)(I) of the CEA<sup>52</sup> to permit an unregistered debt security, or a narrow-based index composed of unregistered debt securities, to underlie a security future if the following conditions are met:

(1) Each such security is a note, bond, debenture, or evidence of indebtedness that is not an equity security as defined in Section 3(a)(11) of the Exchange Act;<sup>53</sup>

(2) The issuer of each such security has registered the offer and sale of the security under the Securities Act;

(3) The issuer of each such security, or the issuer's parent if the issuer is a wholly-owned subsidiary (as such terms are defined in Rule 1-02 of SEC Regulation S-X),<sup>54</sup> has at least one class of common or preferred equity security registered under Section 12(b) of the Exchange Act<sup>55</sup> and listed on a national securities exchange;

(4) The transfer agent of each such security is registered under Section 17A of the Exchange Act;<sup>56</sup> and

(5) The trust indenture for each such security has been qualified under the Trust Indenture Act of 1939.<sup>57</sup>

Accordingly, *It is ordered*, pursuant to Section 6(h)(4) of the Exchange Act and Section 2(a)(1)(D)(v)(I) of the CEA, that the requirements in Sections 6(h)(3)(A) and 6(h)(3)(D) of the Exchange Act and the criteria in Sections 2(a)(1)(D)(i)(I) and 2(a)(1)(D)(i)(III) of the CEA are modified, subject to the conditions set forth above, *provided however*, this order does not affect the CFTC's exclusive jurisdiction under Section 2(a)(1)(C) of the CEA over any futures contract based on an index that is not a "narrow-based security index," as defined in section 3(a)(55) of the Exchange Act and Section 1a(25) of the CEA. Accordingly, nothing in this order shall affect or limit the exclusive authority and jurisdiction of the CFTC with respect to any futures contract, now or in the future, including the CFTC's authority to approve any futures contract that is based upon an index that is not a "narrow-based security index."

Dated: November 19, 2009.

By the Commodity Futures Trading Commission.<sup>58</sup>

**David A. Stawick,**  
Secretary.

By the Securities and Exchange Commission.

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61021; File No. SR-NYSEArca-2009-103]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change Regarding Listing and Trading of RP Short Duration ETF

November 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 6, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared

<sup>58</sup> Because the Commissions are jointly modifying the listing requirements to permit security futures on any security that is eligible to underlie options contracts traded on a national securities exchange, this order supersedes and replaces the Prior Joint Orders. See *supra* notes 12 and 13.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>43</sup> These four conditions are consistent with the conditions in the NYSE Exemption, *supra* note 9.

<sup>44</sup> 15 U.S.C. 77a *et seq.*

<sup>45</sup> 15 U.S.C. 78(b).

<sup>46</sup> The terms "parent" and "wholly-owned" have the same meanings as in Rule 1-02 of SEC Regulation S-X, 17 CFR 210.1-02.

<sup>47</sup> 15 U.S.C. 78q-1.

<sup>48</sup> 15 U.S.C. 77aaa-77bbbbb.

<sup>49</sup> 15 U.S.C. 78f(h)(3)(D).

<sup>50</sup> 7 U.S.C. 2(a)(1)(D)(i)(III).

<sup>51</sup> 15 U.S.C. 78f(h)(3)(A).

<sup>52</sup> 7 U.S.C. 2(a)(1)(D)(i)(I).

<sup>53</sup> 15 U.S.C. 78c(a)(11).

<sup>54</sup> 17 CFR 210.1-02.

<sup>55</sup> 15 U.S.C. 78(b).

<sup>56</sup> 15 U.S.C. 78q-1.

<sup>57</sup> 15 U.S.C. 77aaa-77bbbbb.

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**

Pursuant to the provisions of Section 19(b)(1) of the Act, NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc., proposes to list and trade under NYSE Arca Equities Rule 8.600 the shares of the RP Short Duration ETF, a series of the Grail Advisors ETF Trust. The shares of the ETF are collectively referred to herein as the "Shares."

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyx.com>, at the Exchange's principal office 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 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 Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

The Exchange proposes to list and trade the Shares of the RP Short Duration ETF ("ETF" or "Fund") under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.<sup>3</sup> The ETF will be an actively

managed exchange traded fund which is a series of Grail Advisors ETF Trust ("Trust"). The Trust is registered with the Commission as an investment company.<sup>4</sup>

##### **Description of the Shares and the Fund**

Grail Advisors, LLC is the Fund's investment manager ("Manager"). RiverPark Advisors, LLC ("RP") serves as the primary sub-adviser and Cohanzick Management, LLC ("Cohanzick") serves as sub-adviser to the ETF. The Bank of New York Mellon Corporation is the administrator, Fund accountant, transfer agent and custodian for the ETF. ALPS Distributors, Inc. serves as the distributor of Creation Units for the ETF on an agency basis.

##### **RP Short Duration ETF**

The investment objective of the ETF is current income with potential capital appreciation consistent with the preservation of capital.

The ETF invests, under normal circumstances, at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in debt securities. These securities include short- and intermediate-term securities issued by the U.S. Government, its agencies and instrumentalities, or corporate bonds or notes that Cohanzick, the ETF's sub-adviser, believes are consistent with the ETF's investment objective. Under normal circumstances, the ETF invests at least 65% of its assets in investment grade obligations, including securities issued or guaranteed by the U.S. Government, its agencies and instrumentalities. Investment-grade securities are securities rated BBB or BAA (or higher) by Standard & Poor's or Moody's, respectively, or the equivalent by a nationally recognized statistical rating organization rating that security (a "rating agency"). The ETF may invest up to 25% of its net assets in high yield securities or below investment-grade securities, commonly known as "junk bonds," rated BB or BA (or lower) by Standard & Poor's or Moody's, respectively, or the equivalent by a rating agency or, if unrated, determined

by Cohanzick to be of comparable quality.

The ETF expects to maintain an average-weighted effective maturity of three years or less.<sup>5</sup> Due to the nature of securities in which the ETF invests, Cohanzick may make frequent changes to the portfolio and the ETF's portfolio turnover may be relatively higher than comparable fixed income funds.

In selecting portfolio securities for the ETF, in addition to considering economic factors such as the effect of interest rates and term structure on the ETF's investments, Cohanzick applies a "bottom-up" credit analysis. This means that Cohanzick looks at income-producing securities one at a time to determine if a security is a reasonable or an attractive investment opportunity, and if it is consistent with the ETF's investment objective. The credit analysis may include, but is not limited to, considering the current yield and yield-to-maturity of a potential investment relative to similar securities of a similar rating, positive and/or negative credit events that have occurred recently or may occur in the future, and fundamental analysis in determining value versus perceived credit rating or market pricing.

The ETF may not invest more than 20% of its net assets in bank loans. The ETF expects to invest only in U.S. dollar denominated securities.

Under adverse market conditions, the ETF may, for temporary defensive purposes, invest up to 100% of its assets in cash or cash equivalents, including investment grade short-term obligations. To the extent the Fund invokes this strategy, its ability to achieve its investment objective may be affected adversely.

The Fund will not invest in non-U.S. equity securities.

##### **Investment Policies of the ETF**

The Registration Statement enumerates investment policies which may be changed with respect to the ETF only by a vote of the holders of a majority of the ETF's outstanding voting securities. Among these policies are the following: (1) Regarding diversification, the ETF may not invest more than 5% of its total assets (taken at market value) in securities of any one issuer, other

<sup>3</sup> The Commission approved NYSE Arca Equities Rule 8.600 and the listing and trading of certain funds of the PowerShares Actively Managed Funds Trust on the Exchange pursuant to Rule 8.600 in Securities Exchange Act Release No. 57619 (April 4, 2008) 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25). The Commission also previously approved listing and trading on the Exchange, or trading on the Exchange pursuant to unlisted trading privileges ("UTP") of the following actively managed funds under Rule 8.600: Securities Exchange Act Release Nos. 57626 (April 4, 2008), 73 FR 19923 (April 11, 2008) (SR-NYSEArca-2008-28) (order approving trading pursuant to UTP of Bear Stearns Active ETF); 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving listing of twelve actively-managed funds of the WisdomTree Trust); 59826 (April 28, 2009), 74 FR 20512 (May

4, 2009) (SR-NYSEArca-2009-22) (order approving listing of Grail American Beacon Large Cap Value ETF); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR-NYSEArca-2009-55) (order approving listing of Dent Tactical ETF); 60717 (September 24, 2009), 74 FR 50853 (October 1, 2009) (SR-NYSEArca-2009-74) (order approving listing of four Grail Advisors RP ETFs).

<sup>4</sup> See Registration Statement on Form N-1A for the Trust filed with the Securities and Exchange Commission on October 7, 2009 (File Nos. 333-148082 and 811-22154) (the "Registration Statement"). The description of the ETF and the Shares contained herein are based on information in the Registration Statement.

<sup>5</sup> According to the Registration Statement, "effective" maturity differs from actual maturity, which may be longer. In calculating the "effective" maturity, Cohanzick estimates the effect of expected principal payments and call provisions on securities held in the portfolio. This gives the portfolio managers additional flexibility in the securities they purchase, but could also result in more volatility than if the ETF were to calculate and make investments based on an actual maturity target.

than obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities, or purchase more than 10% of the voting securities of any one issuer, with respect to 75% of the ETF's total assets; and (2) regarding concentration, the ETF may not invest more than 25% of its total assets in the securities of companies primarily engaged in any one industry or group of industries provided that: (i) This limitation does not apply to obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities; and (ii) municipalities and their agencies and authorities are not deemed to be industries. The ETF may not invest more than 15% of its net assets in illiquid securities, including time deposits and repurchase agreements that mature in more than seven days.<sup>6</sup> For this purpose, "illiquid securities" are securities that the ETF may not sell or dispose of within seven days in the ordinary course of business at approximately the amount at which the ETF has valued the securities.

In addition to the investment strategies described in the prospectus for the ETF, the ETF may enter into dollar rolls, delayed delivery transactions and forward commitment transactions and may buy and sell "when issued" securities, as described in the Registration Statement. The ETF may invest in mortgage- or other asset-backed securities. Mortgage-related securities include mortgage pass-through securities, collateralized mortgage obligations ("CMOs"), commercial mortgage-backed securities, mortgage dollar rolls, CMO residuals, stripped mortgage-backed securities ("SMBs") and other securities that directly or indirectly represent a participation in, or are secured by and payable from, mortgage loans on real property. In pursuing its individual objectives, the ETF may, to the extent permitted by their investment objective and policies, purchase and sell (write) both put options and call options on securities, swap agreements, securities indexes, and enter into interest rate and index futures contracts and purchase and sell options on such futures contracts ("futures options") for hedging purposes or to seek to replicate the composition and performance of a particular index, except that the ETF does not intend to enter into transactions involving currency futures or options.

<sup>6</sup> This is a non-fundamental investment restriction applicable to each Fund and may be changed with respect to a Fund by a vote of a majority of the Board.

The ETF also may enter into swap agreements with respect to interest rates and indexes of securities. The ETF may invest in structured notes. If other types of financial instruments, including other types of options, futures contracts, or futures options are traded in the future, the ETF also may use those instruments, provided that their use is consistent with the ETF's investment objective. The ETF may, to the extent specified in the Registration Statement, purchase and sell both put and call options on fixed income or other securities or indexes in standardized contracts traded on foreign or domestic securities exchanges, boards of trade, or similar entities, or on an over-the-counter market, and agreements, sometimes called cash puts, which may accompany the purchase of a new issue of bonds from a dealer. The ETF will write call options and put options only if they are "covered."

The ETF may invest in futures contracts and options thereon with respect to, but not limited to, interest rates and security indexes. The ETF will only enter into futures contracts and futures options which are standardized and traded on a U.S. exchange, board of trade, or similar entity, or quoted on an automated quotation system. According to the Registration Statement, neither the Trust nor the Fund are deemed to be "commodity pools" or "commodity pool operators" under the Commodity Exchange Act<sup>7</sup> ("CEA"), and are not subject to registration or regulation as such under the CEA.

The ETF may engage in swap transactions, including, but not limited to, swap agreements on interest rates or security indexes and specific securities. The ETF also may enter into options on swap agreements ("swap options"); purchase or otherwise receive warrants or rights; enter into repurchase agreements with banks and broker-dealers; and invest a portion of its assets in cash or cash items pending other investments or to maintain liquid assets required in connection with some of the ETF's investments. These cash items may include money market instruments, such as securities issued by the U.S. Government and its agencies, bankers' acceptances, commercial paper, and bank certificates of deposit.

The ETF may invest in pooled real estate investment vehicles and other real estate-related investments such as securities of companies principally engaged in the real estate industry. The ETF may invest in the securities of other investment companies to the extent permitted by law. Subject to applicable

regulatory requirements, the ETF may invest in shares of both open- and closed-end investment companies (including money market funds and ETFs). The ETF also may invest in private investment funds, vehicles, or structures.

Commentary .07 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio.<sup>8</sup> In addition, Commentary .07 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Grail Advisors, LLC is affiliated with a broker-dealer, Grail Securities, LLC, and has implemented a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio. RP and Cohanzyck are not affiliated with a broker-dealer.<sup>9</sup> Any

<sup>8</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the investment adviser is 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.

<sup>9</sup> The Exchange represents that Grail Advisors, LLC, as the investment adviser of the Funds, RP as the primary sub-adviser, and Cohanzyck as a sub-adviser, and their respective related personnel, are subject to Investment Advisers Act Rule 204A-1. This Rule specifically requires the adoption of a code of ethics by an investment adviser to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable Federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A-1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer ("CCO") or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment adviser to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. 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

Continued

<sup>7</sup> 7 U.S.C. 1.

additional Fund sub-advisers that are affiliated with a broker-dealer will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio.

#### Availability of Information

The ETF's Web site (<http://www.grailadvisors.com>), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the ETF: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>10</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session<sup>11</sup> on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the "Disclosed Portfolio") held by the ETF that will form the basis for the ETF's calculation of NAV at the end of the business day.<sup>12</sup> The Web site and information will be publicly available at no charge.

In addition, for the ETF, an estimated value, defined in NYSE Arca Equities

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.

<sup>10</sup> The Bid/Ask Price of the ETF is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the NAV. The records relating to Bid/Ask Prices will be retained by the ETF and its service providers.

<sup>11</sup> The Core Trading Session is 9:30 a.m. to 4 p.m. Eastern time.

<sup>12</sup> 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"). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. 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.

Rule 8.600 as the "Portfolio Indicative Value," that reflects an estimated intraday value of the ETF's portfolio, will be disseminated. The Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the ETF on a daily basis and to provide a close estimate of that value throughout the trading day.

Information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association high-speed line.

On a daily basis, the Fund will disclose on the its Web site for each portfolio security or other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Form N-CSR and Form N-SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's Web site at <http://www.sec.gov>. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.

Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers.

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

relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

#### Initial and Continued Listing

The Shares will be subject to NYSE Arca Equities Rule 8.600(d), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Shares must be in compliance with Rule 10A-3<sup>13</sup> under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value per Share will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

#### Trading Halts

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. Shares of the Fund will be halted if the "circuit breaker" parameters in NYSE Arca Equities Rule 7.12 are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading

<sup>13</sup> See 17 CFR 240.10A-3.

increment for Shares on the Exchange will be \$0.01.

#### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which includes Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of ISG.<sup>14</sup>

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its 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: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) 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; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) 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 (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to

various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. Eastern time each trading day.

#### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>15</sup> 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 the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in NYSE Arca Equities Rule 8.600 are intended to protect investors and the public interest.

#### 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 purposes of the Act.

#### 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 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date 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:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

#### 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-2009-103 on the subject line.

##### Paper Comments

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

All submissions should refer to File Number SR-NYSEArca-2009-103. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File

<sup>14</sup> For a list of the current members of ISG, see <http://www.isgportal.org>. The Exchange notes that not all of the components of the Disclosed Portfolio for the Fund may trade on exchanges that are members of ISG.

<sup>15</sup> 15 U.S.C. 78f(b)(5).

Number SR-NYSEArca-2009-103 and should be submitted on or before December 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-28118 Filed 11-23-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61022; File No. SR-NYSEArca-2009-101]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change Amending Equities Rule 5.2(j)(3)

November 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 5, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("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 proposes to amend Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), the initial listing standards for Investment Company Units. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office 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 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) to amend the index weight requirements and adopt notional volume traded per month<sup>3</sup> to the initial listing standards for Investment Company Units, commonly referred to as exchange traded funds. The Exchange proposes to amend the minimum component stock weight requirement for monthly trading volumes from 90% to 70% of the weight of the underlying index. In addition, the Exchange's proposal to adopt an alternative notional volume traded per month listing standard is based upon NYSE Arca Equities Rule 5.2(j)(6), the Exchanges listing standards for Equity Index-Linked Securities.<sup>4</sup>

Currently for U.S. indexes, Commentary .01(a)(A)(2) to Rule 5.2(j)(3) provides that Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 90% of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.

The Exchange proposes to amend the minimum component stock weight requirements from 90% to 70% of the weight of the underlying index or portfolio. Further, the Exchange is proposing adopt and average minimum trading volume of 250,000 shares over a six month period instead of in each of the last six months and to adopt a notional volume traded per month of \$25,000,000 averaged over the last six months as an option for meeting the listing requirements. Proposed Commentary .01(a)(A)(2) to Rule 5.2(j)(3) sets forth:

- Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 70% of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum monthly trading volume of 250,000

<sup>3</sup> The notional volume traded per month is the number of shares traded globally in a calendar month multiplied by the monthly closing price.

<sup>4</sup> See Securities Exchange Act Release No. 58376 (August 18, 2008), 73 FR 49726 (August 22, 2008) (SR-NYSEArca-2008-70).

shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months;

Currently for international or global indexes, Commentary .01(a)(B)(2) to Rule 5.2(j)(3) provides that Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 90% of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.

The Exchange proposes to amend the minimum component stock weight requirements from 90% to 70% of the weight of the underlying index or portfolio. Further, the Exchange is proposing adopt and average minimum trading volume of 250,000 shares over a six month period instead of in each of the last six months and to adopt a notional volume traded per month of \$25,000,000 averaged over the last six months as an option for meeting the listing requirements. Further, the Exchange proposes to clarify that the component stock trading volumes are determined on a global basis. Proposed Commentary .01(a)(B)(2) to Rule 5.2(j)(3) sets forth:

- Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 70% of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months;

With regard to the Exchange's proposal to amend the minimum component stock weight requirement for monthly trading volumes from 90% to 70% of the weight of the underlying index, the Exchange believes the proposed standard reasonably ensures that securities with substantial monthly trading volumes account for a substantial portion of the underlying index and, when applied in conjunction with the other applicable listing requirements, remain sufficiently broad-based in scope to minimize potential manipulation. The Exchange notes that the Commission has previously approved the listing and trading of Investment Company Units based upon indices that were composed of stocks that did not meet the 90% monthly trading volume weight.<sup>5</sup> Instead, these

<sup>5</sup> See Securities and [sic] Exchange Act Release No. 46306 (August 2, 2002), 69 [sic] FR 51916 (August 9, 2002) (SR-NYSE-2002-28) (approving the following funds for trading pursuant to unlisted

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.