

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. Please include File Number SR-FINRA-2009-092 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-FINRA-2009-092. 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 FINRA. 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 available publicly. All submissions should refer to File Number SR-FINRA-2009-092 and should be submitted on or before January 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61227; File No. SR-NYSEArca-2009-114]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing of Grail McDonnell Fixed Income ETFs

December 22, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Exchange Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on December 16, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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

Pursuant to the provisions of Section 19(b)(1) of the Exchange Act, NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities" or the "Corporation"), proposes to list and trade the shares of the following funds under NYSE Arca Equities Rule 8.600: Grail McDonnell Intermediate Municipal Bond ETF and the Grail McDonnell Core Taxable Bond ETF (each an "ETF" and, collectively, the "ETFs"). The shares of the ETFs 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.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

NYSE Exchange proposes to list and trade the Shares of the ETFs under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.⁴ Each of the ETFs will be an actively managed exchange traded fund each of which is a series of Grail Advisors ETF Trust ("Trust"). The Trust is registered with the Commission as an investment company.⁵

⁴ 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 on the Exchange pursuant to UTP of Bear Stearns Active ETF); 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading 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 Exchange listing and trading of Grail American Beacon Large Cap Value ETF; 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR-NYSEArca-2009-55) (order approving Exchange listing and trading 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); 60975 (November 10, 2009), 74 FR 59590 (November 18, 2009) (SR-NYSEArca-2009-83) (order approving listing of Grail American Beacon International Equity ETF); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (order approving listing of five fixed income funds of the PIMCO ETF Trust).

⁵ See Registration Statement on Form N-1A for the Trust filed with the Securities and Exchange Commission on October 5, 2009 (File Nos. 333-148082 and 811-22154) (the "Registration Statement"). The descriptions of the ETFs and the

Continued

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹⁰ 17 CFR 200.30-3(a)(12).

Description of the Shares and the Funds

Grail Advisors, LLC is each Fund's investment manager ("Manager"). McDonnell Investment Management, LLC ("McDonnell" or "Sub-Adviser") serves as each ETF's sub-adviser. The Bank of New York Mellon Corporation is the administrator, Fund accountant, transfer agent and custodian for the ETFs. ALPS Distributors, Inc. serves as the distributor of Creation Units for each ETF on an agency basis.

Grail McDonnell Intermediate Municipal Bond ETF

According to the Registration Statement, the investment objective of the ETF is a high level of current tax-exempt income and higher risk-adjusted returns relative to its benchmark.⁶ 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 with interest payments exempt from federal income taxes. The ETF will typically invest in municipal securities and will invest, under normal market conditions, primarily in tax exempt general obligation, revenue and private activity bonds and notes, which are issued by or on behalf of states, territories or possessions of the U.S. and the District of Columbia and their political subdivisions, agencies and instrumentalities (including Puerto Rico, the Virgin Islands and Guam). The ETF's investments generally include municipal securities with a full range of maturities and broad issuer and geographic diversification. While the Fund may invest in securities of any maturity, under normal circumstances, the dollar-weighted average maturity of the portfolio is expected to range from three to ten years.

The ETF invests primarily in investment grade securities, which are securities rated in one of the top four credit quality categories by at least one nationally recognized statistical rating organization rating that security ("rating agency"). The ETF considers pre-refunded bonds or escrowed to maturity municipal securities, regardless of rating, to be investment grade securities. The ETF may invest up to 20% of its net assets in high yield securities or below

investment-grade securities rated BB+ (or comparable) or below by a rating agency or, if unrated, determined by McDonnell to be of comparable quality.

The ETF may invest up to 20% of its assets in taxable debt securities. These may include securities issued by the U.S. Government, its agencies and instrumentalities, corporate debt securities, mortgage-backed and other asset-backed securities, and securities of other investment companies, including other exchange-traded funds. The ETF may only invest in U.S. dollar-denominated securities.

Grail McDonnell Core Taxable Bond ETF

According to the Registration Statement, the investment objective of the ETF is a high level of current income and higher risk-adjusted returns relative to its benchmark.⁷ 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. The ETF will invest primarily in investment-grade securities, including securities issued by the U.S. Government, its agencies and instrumentalities, municipal securities, mortgage-backed and other asset-backed securities, and corporate and bank obligations, including commercial paper, corporate notes and bonds. While the ETF may invest in securities of any maturity, under normal circumstances, the average duration of the portfolio is typically expected to range from three to six years. Duration is a measure of the underlying portfolio's price sensitivity to changes in interest rates.

The ETF invests primarily in investment grade securities, which are securities rated in one of the top four credit quality categories by at least one rating agency. The ETF may invest up to 20% of its net assets in high yield securities or below investment-grade securities rated BB+ (or comparable) or below by a rating agency or, if unrated, determined by McDonnell to be of comparable quality.

The ETF may invest without limit in securities issued by the U.S. Government, its agencies and instrumentalities, up to 90% of its assets in mortgage-backed and other asset-backed securities, (subject to the 20% of Fund assets limitation for high yield

securities or below investment-grade securities referenced above), and up to 80% of its assets in corporate bonds. In addition, the ETFs may invest up to 30% of its assets in municipal securities. The Fund may only invest in U.S. dollar-denominated securities. It may also invest in securities of other investment companies, including other Funds and money market funds.

According to the Registration Statement, the Sub-Adviser, with respect to each of the ETFs, adheres to a total return investment philosophy in which the investment team seeks to reduce the ETFs' exposure to interest rate risk by limiting dependence on the timing of purchases and sales for the portfolio by controlling its interest rate sensitivity (*i.e.* duration) relative to the benchmark. McDonnell looks for opportunities to outperform the ETFs' stated risk tolerance/benchmark by identifying relative value opportunities among sectors and securities, and exploiting the changing shape of the yield curve. The investment process employed by McDonnell utilizes fundamental credit analysis within a quantitative risk management framework in order to identify relative return opportunities across sectors, among securities and along the maturity/yield curve spectrum. Credit analysts and portfolio managers participate in regular periodic discussions of trends and opportunities in making sector and security selections.

As discussed below, the ETFs may invest in derivative instruments, such as futures and interest rate, total return and credit default swaps. Investments in derivatives must be consistent with the ETFs' investment objective and may only be used to manage risk and not to enhance leverage.

Under adverse market conditions, the ETFs 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 Funds will not invest in non-U.S. equity securities.

Investment Policies of the ETFs

The Registration Statement enumerates investment policies which may be changed with respect to an 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 ETFs may not invest more than 5% of their total assets (taken at market value) in securities of any one issuer,

Shares contained herein are based on information in the Registration Statement.

⁶ The benchmark for the Grail McDonnell Intermediate Municipal Bond ETF is the Barclays 3 to 15 Year National Municipal Bond Index, which is a rules-based, market-value-weighted index engineered for the long-term tax-exempt bond market. To be included in the index, bonds must be rated investment-grade (Baa3/BBB- or higher) by at least two of the following ratings agencies: Moody's, S&P, and Fitch.

⁷ The benchmark for the Grail McDonnell Core Taxable Bond ETF is Barclays Aggregate Index, which represents securities that are SEC-registered, taxable, and dollar denominated. The index covers the U.S. investment grade fixed rate bond market, with index components for government and corporate securities, mortgage pass-through securities, and asset-backed securities.

other 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 ETFs may not invest more than 25% of their 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 ETFs may not invest more than 15% of their net assets in illiquid securities, including time deposits and repurchase agreements that mature in more than seven days.⁸ 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.

According to the Registration Statement, in addition to the investment strategies described in the prospectus for the ETFs, the ETFs 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 their individual objectives, the ETFs 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 ETFs do not intend to enter into transactions involving currency futures or options.

An ETF also may enter into swap agreements with respect to interest rates and indexes of securities. An 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, an ETF also may use those instruments, provided that their use is consistent with the ETF's investment objective. An 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 quoted on Nasdaq 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. An ETF will write call options and put options only if they are "covered."

An ETF may invest in futures contracts and options thereon with respect to, but not limited to, interest rates and security indexes. An 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 Funds are deemed to be "commodity pools" or "commodity pool operators" under the Commodity Exchange Act, and are not subject to registration or regulation as such under the Commodity Exchange Act.

An ETF may engage in swap transactions, including, but not limited to, swap agreements on interest rates or security indexes and specific securities. An ETF also may enter into options on swap agreements ("swap options"). The ETFs may purchase or otherwise receive warrants or rights. The ETFs may enter into repurchase agreements with banks and broker-dealers. An ETF may 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.

Each ETF may invest in municipal securities. The ETFs 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. Each ETF may invest in the securities of other investment companies to the extent permitted by law. Subject to applicable regulatory requirements, an ETF may invest in shares of both open- and closed-end investment companies (including money market funds and ETFs).

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.⁹ 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. Commentary .07 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .07 in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. 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. The Sub-Adviser is not affiliated with a broker-dealer.¹⁰ Any

⁹ 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 Manager and Sub-adviser are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act.

¹⁰ The Exchange represents that Grail Advisors, LLC, as the investment adviser of the Funds, and McDonnell, the sub-adviser, and their 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

⁸ 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.

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 ETFs' 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 each ETF that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the ETFs: (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"),¹¹ 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 Session¹² 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 ETFs that will form the basis for the ETFs' calculation of NAV at the end of the business day.¹³ The Web site and

information will be publicly available at no charge.

In addition, for each ETF, an estimated value, defined in NYSE Arca Equities 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 an 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 ETFs will disclose on the ETFs' Web site for each portfolio security or other financial instrument of the ETF 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 ETF'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 ETFs, 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 ETFs 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-3¹⁴ 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 ETFs. Shares of the ETFs 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 ETFs; 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 ETFs 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

Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

¹¹ The Bid/Ask Price of each 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 each ETF and its service providers.

¹² The Core Trading Session is 9:30 a.m. to 4 p.m. Eastern time.

¹³ Under accounting procedures followed by the ETF, 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, each ETF 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.

¹⁴ See 17 CFR 240.10A-3.

transactions in the Shares during all trading sessions. The minimum trading 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.¹⁵

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 ETFs are 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 4:00 p.m. Eastern time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)¹⁶ 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 additional types 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 Exchange consents, the Commission will:

(A) by order approve such 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 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. Please include File Number SR-NYSEArca-2009-114 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NYSEArca-2009-114. 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 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; the Commission does not edit personal identifying information from submissions. You

¹⁵ 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 ETFs may trade on exchanges that are members of ISG.

¹⁶ 15 U.S.C. 78f(b)(5).

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2009-114 and should be submitted on or before January 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61228; File No. SR-ISE-2009-106]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To List and Trade Options on the ETFS Gold Trust and the ETFS Silver Trust

December 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 10, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 its rules to enable the listing and trading on the Exchange of options on the ETFS Gold Trust and the ETFS Silver Trust. The text of the proposed rule change is available on the Exchange's Web site <http://www.ise.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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

Recently, the U.S. Securities and Exchange Commission ("SEC" or "Commission") authorized ISE to list and trade options on the SPDR Gold Trust³ and on the iShares COMEX Gold Trust and the iShares Silver Trust.⁴ Now, the Exchange proposes to list and trade options on the ETFS Gold Trust and the ETFS Silver Trust.

Under current Rule 502(h), only Exchange-Traded Fund Shares, or ETFs, that are traded on a national securities exchange and are defined as an "NMS" stock under Rule 600 of Regulation NMS, and that (i) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments, including, but not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the "Financial Instruments"), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the "Money Market Instruments") comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments) or (ii) represent interests in a trust that holds a specified non-U.S. currency or currencies deposited with the trust when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified

non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust ("Funds") or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency ("Commodity Pool ETFs") or (iv) are issued by the SPDR® Gold Trust are eligible as underlying securities for options traded on the Exchange or (v) represents an interest in a registered investment company ("Investment Company") organized as an open-end management company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value ("NAV"), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV ("Managed Fund Share").⁵ This rule change proposes to expand the types of ETFs that may be approved for options trading on the Exchange to include the ETFS Gold Trust and the ETFS Silver Trust.

Apart from allowing the ETFS Gold Trust and the ETFS Silver Trust to be underlyings for options traded on the Exchange as described above, the listing standards for ETFs will remain unchanged from those that apply under current Exchange rules. ETFs on which options may be listed and traded must still be listed and traded on a national securities exchange and must satisfy the other listing standards set forth in ISE Rule 502(h).

Specifically, in addition to satisfying the aforementioned listing requirements, ETFs must meet (1) the criteria and guidelines under ISE Rules 502(a) and (b) or (2) be available for creation or redemption each business day from or through the issuing trust, investment company, commodity pool or other entity in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue Exchange-Traded Fund Shares in a

³ See Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (SR-ISE-2008-12).

⁴ See Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 75148 (December 10, 2008) (SR-ISE-2008-58).

⁵ See ISE Rule 502(h).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.