

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61163; File No. SR-NYSEArca-2009-103)

December 14, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change Regarding Listing and Trading of RP Short Duration ETF

On November 6, 2009, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the RP Short Duration ETF (“Fund”). The proposed rule change was published for comment in the Federal Register on November 24, 2009.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change on an accelerated basis.

I. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.600, which governs the listing of Managed Fund Shares. The Fund will be an actively managed exchange traded fund, which is a series of Grail Advisors ETF Trust (“Trust”).⁴ The investment objective of the Fund is current income with potential capital appreciation consistent with the preservation of capital. The Fund will invest, 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,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61021 (November 17, 2009), 74 FR 61383 (“Notice”).

⁴ The Trust is registered with the Commission as an investment company. On October 7, 2009, the Trust filed with the Commission a Registration Statement on Form N-1A (File Nos. 333-148082 and 811-22154) (“Registration Statement”).

its agencies and instrumentalities, or corporate bonds or notes that 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. The Fund will not invest in non-U.S. equity securities.⁵

The Shares will be subject to the initial and continued listing criteria applicable to Managed Fund Shares under NYSE Arca Equities Rule 8.600(d), and the Exchange represents that the Fund will comply with Rule 10A-3 under the Act,⁶ as provided by NYSE Arca Equities Rule 5.3.

Additional information regarding the Fund, the Shares, the Fund's investment objectives, strategies, policies, and restrictions, risks, fees and expenses, creations and redemptions of Shares, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice.⁷

II. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act⁸ and the rules and regulations thereunder applicable to a national securities exchange.⁹ In particular, the Commission finds that the

⁵ Additional information regarding the Fund's investments can be found in the Notice and Registration Statement. See supra notes 3 and 4.

⁶ 17 CFR 240.10A-3.

⁷ See supra notes 3 and 4.

⁸ 15 U.S.C. 78f.

⁹ In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

proposal is consistent with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the Exchange's rules be 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 a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹¹ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line, and the Portfolio Indicative Value ("PIV") will be disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors. In addition, the Trust will disclose on its Web site on each business day the identities and quantities of the portfolio of securities and other assets ("Disclosed Portfolio") held by the Fund that will form the basis for its calculation of the net asset value ("NAV"), which will be determined at the end of the business day. The Fund's Web site will also include additional quantitative information updated on a daily basis relating to prices and NAV. Information regarding the market price and volume of the Shares will be continually available on a real-time basis throughout the day via electronic services, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial sections of newspapers.

¹⁰ 17 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

The Commission further believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the Fund that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.¹² Additionally, if it becomes aware that the NAV or the Disclosed Portfolio is not disseminated daily to all market participants at the same time, the Exchange will halt trading in the Shares until such information is available to all market participants.¹³ Further, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.¹⁴ The Exchange represents that the Fund’s investment manager has implemented a “fire wall” between it and its broker-dealer affiliate with respect to access to information concerning the composition and/or changes to the Fund’s portfolio.¹⁵ Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and

¹² See NYSE Arca Equities Rule 8.600(d)(1)(B).

¹³ See NYSE Arca Equities Rule 8.600(d)(2)(D).

¹⁴ Id. Trading in the Shares may also 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.

¹⁵ The Exchange also represents that neither RiverPark Advisors, LLC nor Cohanzick Management, LLC, the Fund’s sub-advisers, have broker-dealer affiliates, and that any 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 the portfolio.

maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.¹⁶

The Exchange has deemed the Shares to be equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.
- (2) The Exchange's surveillance 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.
- (3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares and that Shares are not individually redeemable; (b) 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; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) 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 (f) trading information.
- (4) The Funds will be in compliance with Rule 10A-3 under the Act.

¹⁶ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

(5) The Funds will not invest in non-U.S. equity securities.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁷ for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the Federal Register. The Commission notes that it has approved the listing and trading on the Exchange of shares of other actively managed exchange-traded funds based on a portfolio of securities,¹⁸ including other series of the Grail Advisors ETF Trust,¹⁹ and that the proposed rule change does not raise any novel regulatory issues. The Commission also notes that it has received no comments regarding the proposed rule change, and believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Managed Fund Shares.

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ See, e.g., Securities Exchange Act Release No. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (approving the listing of five fixed income funds of the PIMCO ETF Trust).

¹⁹ See, e.g., Securities Exchange Act Release No. 60717 (September 24, 2009), 74 FR 50853 (October 1, 2009) (NYSEArca-2009-74) (approving the listing and trading of shares of RP Growth ETF, RP Focused Large Cap Growth ETF, RP Technology ETF and the RP Financials ETF).

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act²⁰, that the proposed rule change (SR-NYSEArca-2009-103) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Florence E. Harmon
Deputy Secretary

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).