

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60552; File No. SR-NYSEArca-2009-74)

August 20, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change  
Relating to Listing Four Grail Advisors RP Exchange-Traded Funds

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

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

Pursuant to the provisions of Section 19(b)(1) of the Act, NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities” or the “Corporation”), proposes to list and trade the following Grail Advisors actively managed exchange-traded funds, or “ETFs”, under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”): RP Growth ETF, RP Focused Large Cap Growth ETF, RP Technology ETF and the RP Financials ETF (each an “ETF” or “Fund” and collectively the “ETFs or “Funds”), each of which is a series of Grail Advisors ETF Trust (“Trust”).

The text of the proposed rule change is available on the Exchange’s Web site at [www.nyx.com](http://www.nyx.com), at the Exchange’s principal office and at the Commission’s Public Reference

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the following Managed Fund Shares<sup>4</sup> ("Shares") under NYSE Arca Equities Rule 8.600: RP Growth ETF, RP Focused Large Cap Growth ETF, RP Technology ETF and the RP Financials ETF.<sup>5</sup> The Shares will be offered by Grail Advisors

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<sup>4</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>5</sup> The Commission previously approved listing and trading on the Exchange of the following actively managed funds under NYSE Arca Equities Rule 8.600. See Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25) (order approving Rule 8.600 and Exchange listing and trading of PowerShares Active AlphaQ Fund, PowerShares Active Alpha Multi-Cap Fund, PowerShares Active Mega-Cap Portfolio and PowerShares Active Low Duration Portfolio); Securities Exchange Act Release No. 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); Securities Exchange Act Release No. 59826 (April 28, 2009), 74 FR 20512 (May 4, 2009) (SR-NYSEArca-2009-

ETF Trust (the “Trust”), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.<sup>6</sup> Grail Advisors, LLC (the “Manager”), a majority owned subsidiary of Grail Partners, LLC, acts as the Fund’s investment manager. RiverPark Advisors, LLC (“RP”) serves as the primary sub-adviser and Wedgewood Partners, Inc. (“Wedgewood”) serves as sub-adviser to RP Focused Large Cap Growth ETF. RP serves as the exclusive sub-adviser of the RP Growth, RP Technology and RP Financials ETFs.

The Bank of New York Mellon Corporation is the administrator, Fund accountant, transfer agent and custodian for the Funds. ALPS Distributors, Inc. (“Distributor”), serves as the distributor of Creation Units for each ETF on an agency basis. The investment objective of each of the Funds is long-term capital appreciation. The ETFs expect to invest primarily in the securities of US companies, and may also invest in US securities tied economically to foreign investments, such as American Depositary Receipts.

#### RP Growth ETF

According to the Registration Statement, the RP Growth ETF seeks long-term capital appreciation by investing at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in equity securities of companies that RP, the ETF’s sub-adviser, believes have above-average growth prospects. RP uses a fundamental research driven approach to identifying those industries and companies with the strongest growth prospects for revenue,

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22) (order approving listing and trading of Grail American Beacon Large Cap Value ETF).

<sup>6</sup> The Trust is registered under the 1940 Act. On June 8, 2009, the Trust filed with the Commission post-effective Amendment No. 1 to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Funds (File Nos. 333-148082 and 811-22154) (“Registration Statement”). The

earnings and/or cash flow over the medium and long term and seeks to buy stock in those companies at attractive valuations. The ETF may invest in companies of any market capitalization and in any industry.

The ETF invests in industries that RP believes are the beneficiaries of long-term secular changes in the global economy and companies within those industries that are gaining market share and have, what RP believes to be, long-term sustainable competitive advantages and positions protected by strong barriers to entry. RP seeks companies with latent pricing power, expanding free cash flow and a high return on invested capital. RP also looks for companies with strong and experienced management teams with clear business objectives. RP believes it can gain an investment advantage not only through its primary research and by developing conviction in business models, but also because it invests with a long-term time horizon.

#### RP Focused Large Cap Growth ETF

According to the Registration Statement, the RP Focused Large Cap Growth ETF seeks long-term capital appreciation by investing at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in equity securities of large capitalization companies that Wedgwood, the ETF's sub-adviser, believes have above-average growth prospects. The ETF considers companies with market capitalizations in excess of \$5 billion to be large capitalization companies. The ETF is non-diversified and expects to invest in a limited number of companies, generally holding securities of between 20 and 30 companies.

#### RP Technology ETF

According to the Registration Statement, the RP Technology ETF seeks long-term capital appreciation by investing at least 80% of its net assets (plus the amount of any borrowings for

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description of the operation of the Trust and the Funds herein is based on the Registration

investment purposes) in equity securities of companies that develop, produce or distribute technology-related products and services. These companies participate in many industries within the economy including industrial and business machines; communications; computer hardware and software; computer services and peripheral products; electronics; electronic media; internet; television and video equipment and services; satellite technology and equipment; and semiconductors.

RP, the ETF's sub-adviser, uses a fundamental research driven approach to identify technology-oriented companies that are suitable for the portfolio, and seeks to buy stock in those companies at attractive valuations. The ETF will primarily invest in companies with mid- to large- market capitalizations, but may invest in companies of any market capitalization. The ETF considers companies with market capitalizations of between \$2 billion and \$150 billion to be mid- to large-capitalization companies.

#### RP Financials ETF

According to the Registration Statement, the RP Financials ETF seeks long-term capital appreciation by investing at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in equity securities of financial services companies. The ETF considers financial services companies to be those companies that participate in any aspect of the financial services industry, including, but not limited to, banking, lending, brokerage, exchanges, insurance, and money management, as well as real estate investment trusts ("REITs").

RP, the ETF's sub-adviser, uses a fundamental research driven approach to identify financial services companies that are suitable for the portfolio, and seeks to buy stock in those companies at attractive valuations. The ETF will primarily invest in companies with mid- to

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large- market capitalizations. The ETF considers companies with market capitalizations of between \$2 billion and \$150 billion to be mid- to large-capitalization companies.

With respect to each of the Funds, 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. Investment grade obligations include securities issued or guaranteed by the U.S. Government, its agencies and instrumentalities, as well as securities rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations rating that security. To the extent the ETF invokes this strategy, its ability to achieve its investment objective may be affected adversely.

None of the Funds will invest in non-U.S. equity securities.

In addition to the investment strategies described in the prospectus for the Funds, each ETF may invest up to 20% of its total assets in debt securities that are investment grade at the time of purchase (as described in the Registration Statement), including obligations of the U.S. Government, its agencies and instrumentalities, corporate debt securities, mortgage-backed securities, asset-backed securities, master-demand notes, Yankee dollar and Eurodollar bank certificates of deposit, time deposits, bankers' acceptances, commercial paper and other notes, inflation-indexed securities, and other debt securities. Investment grade securities include securities issued or guaranteed by the U.S. Government, its agencies and instrumentalities, as well as securities rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations ("Rating Organizations") rating that security, such as Standard & Poor's Ratings Services or Moody's Investors Service, Inc., or rated in one of the four highest rating categories by one Rating Organization if it is the only Rating Organization rating that security or unrated, if deemed to be of comparable quality by an ETF's sub-adviser

and traded publicly on the world market. Obligations rated in the fourth highest rating category are limited to 25% of each ETF's debt allocations. An ETF, at the discretion of its sub-adviser, may retain a debt security that has been downgraded below the initial investment criteria.

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, an ETF, with the exception of the RP Focused Large Cap Growth ETF, may not invest more than 5% of its total assets (taken at market value) in securities of any one issuer, other than obligations issued 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 an ETF's total assets; and (2) regarding concentration, an ETF, with the exception of the RP Technology ETF or RP Financials 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.

According to the Registration Statement, the ETFs may invest in US securities tied economically to foreign investments, such as American Depositary Receipts. Although not currently anticipated, the ETFs may use options and futures for various purposes, including for hedging and investment purposes. The ETFs' ability to write and purchase call and put options is limited by the requirements for qualifying as a regulated investment company under the Internal Revenue Code. An ETF may also invest in over-the-counter ("OTC") options. To the extent consistent with applicable law, the ETFs may invest in futures contracts on, among other

things, financial instruments (such as a U.S. government security or other fixed income security), individual equity securities (“single stock futures”), securities indices, interest rates, currencies, inflation indices, and commodities or commodities indices. An ETF’s purchase and sale of index futures is limited to contracts and exchanges approved by the Commodity Futures Trading Commission.

An ETF may engage in transactions involving the use of futures on interest rates. These transactions may be in connection with investments in U.S. government securities and other fixed income securities. An ETF may use options on futures contracts in lieu of writing or buying options directly on the underlying securities or purchasing and selling the underlying futures contracts. An ETF may directly or indirectly use various different types of swaps, such as swaps on securities and securities indices, interest rate swaps, currency swaps, credit default swaps, commodity swaps, inflation swaps, and other types of available swap agreements, depending on the ETF’s investment objective and policies. An ETF may use interest rate caps, floors, and collars for the same or similar purposes as they use interest rate futures contracts and related options and, as a result, will be subject to similar risks.

The ETFs may invest in convertible securities, equity-linked securities, preferred stocks, mortgage-related and other asset-backed securities, warrants, rights, repurchase agreements, debt and other fixed income securities, zero coupon securities, high yield securities, municipal securities, real estate investment trusts and other real estate-related investments. An ETF may invest up to 15% of its net assets in illiquid securities. For this purpose, “illiquid securities” are securities that an 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. 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). According to the Registration Statement, the ETFs have claimed an exclusion from the definition of “commodity pool operator” under the Commodity Exchange Act and, therefore, are not subject to registration or regulation as a pool operator under that Act.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3<sup>7</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 and the Disclosed Portfolio will be made available to all market participants at the same time.

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

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<sup>7</sup> 17 CFR 240.10A-3.

<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, “firewall” procedures as well as procedures designed to prevent the misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act.

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. RP, the Fund's primary sub-adviser, is not affiliated with a broker-dealer. Wedgewood Partners, Inc. is registered as an investment adviser and as a broker-dealer, 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.<sup>9</sup> Any additional Fund sub-advisers that are affiliated with a broker-dealer will be

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<sup>9</sup> The Exchange represents that Grail Advisors, LLC, as the investment adviser of the Funds, and its related personnel, and Wedgewood Partners, Inc., the sub-adviser to RP Focused Large Cap Growth ETF, 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 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

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.

#### Description of the Funds

Creations and redemptions of Shares occur in large specified blocks of Shares, referred to as “Creation Units”. The Creation Unit size for the Fund is 25,000 Shares.

#### Availability of Information

The Funds’ Web site ([www.grailadvisors.com](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 Funds’ Web site will include additional quantitative information updated on a daily basis, including, for each Fund, (1) daily trading volume, the prior business day’s reported closing price, NAV and 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 on the Exchange, the Funds will disclose on its Web site the Disclosed Portfolio as defined in proposed Rule 8.600(c)(2) that will form the basis for the Fund’s calculation of NAV at the end of the business day.<sup>11</sup> In addition, a basket composition

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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 each Fund is determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund’s NAV. The records relating to Bid/Ask Prices will be retained by the Funds and its service providers.

<sup>11</sup> Under accounting procedures followed by the Funds, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Accordingly, the Funds 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.

file, which includes the security names and share quantities required to be delivered in exchange for Fund shares, together with estimates and actual cash components, is publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation (“NSCC”). The basket represents one Creation Unit of the Fund.” The Web site information will be publicly available at no charge.

The NAV of the Fund will normally be determined as of the close of the regular trading session on the New York Stock Exchange (ordinarily 4:00 p.m. Eastern time) on each business day.

Investors can also obtain the Trust’s Statement of Additional Information (“SAI”), the Funds’ 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. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (“CTA”) high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be disseminated by the Exchange at least every 15 seconds during the Core Trading Session through the facilities of CTA. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of a Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Additional information regarding the Shares and the Funds, 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 Funds that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

### 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 Funds. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also 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 Funds; 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 Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds 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.<sup>12</sup> 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).

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<sup>12</sup> See NYSE Arca Equities Rule 7.12, Commentary .04.

The Exchange has appropriate rules to facilitate 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 include 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 that are members of ISG.<sup>13</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

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<sup>13</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

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 Funds 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)<sup>14</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 actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

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<sup>14</sup> 15 U.S.C. 78f(b)(5).

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 30<sup>th</sup> 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-2009-74 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-2009-74. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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-NYSEArca-2009-74 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).