

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61365; File No. SR-NYSEArca-2009-114)

January 15, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to Listing of Grail McDonnell Fixed Income ETFs

On December 16, 2009, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (“NYSE Arca Equities”), 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 Grail McDonnell Intermediate Municipal Bond ETF and the Grail McDonnell Core Taxable Bond ETF (each an “ETF” and, collectively, the “ETFs”) under NYSE Arca Equities Rule 8.600 (Managed Fund Shares). The proposed rule change was published in the Federal Register on December 30, 2009.³ The Commission received no comments on 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. Each ETF will be an actively managed exchange-traded fund each of which is a series of Grail Advisors ETF Trust (“Trust”). The Shares will be offered by the Trust.⁴ Grail Advisors, LLC is each Fund’s investment

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61227 (September 3, 2009), 74 FR 69175 (“Notice”).

⁴ The Trust is a Delaware statutory trust that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a) (“1940 Act”). See Registration Statement on Form N-1A

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.

The Exchange states that the Shares will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600(d) applicable to Managed Fund Shares⁵ and that the Shares will comply with Rule 10A-3 under the Act,⁶ as provided by NYSE Arca Equities Rule 5.3. Additional information regarding the Trust, each of the ETFs, the Shares, the ETFs’ investment objectives, strategies, policies, and restrictions, risks, fees and expenses, creation and redemption procedures, portfolio holdings and policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.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

for the Trust filed with the Commission on October 5, 2009 (File Nos. 333-148082 and 811-22154) (“Registration Statement”).

⁵ The Exchange states that a minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange, and the Exchange will obtain a representation from the issuer of the Shares that the net asset value (“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. See Notice, supra note 3.

⁶ 17 CFR 240.10A-3.

⁷ See supra notes 3 and 4.

⁸ 15 U.S.C. 78f.

applicable to a national securities exchange.⁹ In particular, the Commission finds that the 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 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 high-speed line, and the Portfolio Indicative Value ("PIV") will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. In addition, the Trust will make available on its Web site on each business day, before the commencement of trading in Shares in the Core Trading Session, the Disclosed Portfolio that will form the basis for the calculation of the NAV, which will be determined at the end of the business day. The Trust's Web site will also include additional quantitative information updated on a daily basis relating to the prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of

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).

¹⁰ 17 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

such NAV (the “Bid/Ask Price”),¹² and a calculation of the premium and discount of the Bid/Ask Price against the NAV and 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. Information regarding the market price and volume of the Shares will be continually available on a real-time basis throughout the day on broker’ computer screens and other 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.

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 issuer 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.¹³ 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.¹⁴ 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

¹² 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.

¹³ See NYSE Arca Equities Rule 8.600(d)(1)(B).

¹⁴ See NYSE Arca Equities Rule 8.600(d)(2)(D).

interruption.¹⁵ The Exchange represents that the Adviser is affiliated with a broker-dealer, Grail Securities LLC, and 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 each of the ETF’s portfolio. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of each of the portfolios.¹⁶

The Exchange has represented that the Shares are 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(d).
- (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 in Creation

¹⁵ 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 Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

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

Unit aggregations 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.

(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.

III. Accelerated Approval

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, the characteristics of which are similar to those to be invested by the Funds.¹⁸ The Commission 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 and trading of shares of five actively-managed fixed income funds of the PIMCO ETF Trust).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-NYSEArca-2009-114), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon
Deputy Secretary

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).