

for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: April 13, 2009.

**Harry E. Haskins,**

*Acting Administrator for Investment.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59826; File No. SR-NYSEArca-2009-22]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change To List and Trade Shares of the Grail American Beacon Large Cap Value ETF

April 28, 2009.

On March 13, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the Grail American Beacon Large Cap Value ETF ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published in the **Federal Register** on April 6, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order grants approval to 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.<sup>4</sup> The Shares will be offered by Grail Advisors ETF Trust ("Trust"),<sup>5</sup> a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company. The Exchange states that the Shares will

conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600 and that the Fund will be in compliance with Rule 10A-3 under the Act,<sup>6</sup> as provided by NYSE Arca Equities Rule 5.3.

Grail Advisors, LLC ("Manager"), a majority owned subsidiary of Grail Partners, LLC, is the Fund's investment manager, and American Beacon Advisors, Inc. ("ABA") is the Fund's sub-adviser.<sup>7</sup> The Fund's investment objective is long-term capital appreciation and current income. It seeks to achieve its investment objective by investing at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in equity securities of large market capitalization U.S. companies. These companies will generally have market capitalizations similar to the market capitalizations of the companies in the Russell 1000® Index at the time of investment. The Russell 1000® Index measures the performance of the 1,000 largest U.S. companies based on total market capitalization. The Fund's investments may include common stocks, preferred stocks, securities convertible into U.S. common stocks, U.S. dollar-denominated American Depositary Receipts, and U.S. dollar-denominated foreign stocks traded on U.S. exchanges. The Fund will not purchase or sell securities in markets outside the United States.

Additional information regarding the Fund, the Shares, the Fund's investment objective, 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, as applicable.

<sup>6</sup> 17 CFR 240.10A-3.

<sup>7</sup> The Exchange states that Grail Advisors, LLC is affiliated with Grail Securities, LLC, a broker-dealer. As required by Commentary .07 to NYSE Arca Equities Rule 8.600, the Exchange represents that the Manager has implemented a "fire wall" with respect to such broker-dealer regarding access to information concerning composition and/or changes to the Fund's portfolio. Commentary .07 to NYSE Arca Equities Rule 8.600 also requires 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. In addition, the Exchange represents that ABA, the Fund's primary sub-adviser, is not affiliated with a broker-dealer 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.

#### 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 Act<sup>8</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>10</sup> 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 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, 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 Exchange will disseminate the Portfolio Indicative Value ("PIV") at least every 15 seconds during the Core Trading Session. In addition, the Fund will make available on its Web site on each business day the Disclosed Portfolio that will form the basis for its calculation of the net asset value ("NAV"), which will be determined as of the close of the regular trading session on the New York Stock Exchange (ordinarily 4 p.m. Eastern Time) on each business day. The Fund's Web site will also include additional quantitative information updated on a daily basis relating to trading volume, 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.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 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).

<sup>10</sup> 17 U.S.C. 78f(b)(5).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 59651 (March 30, 2009), 74 FR 15548 ("Notice").

<sup>4</sup> See NYSE Arca Equities Rule 8.600.

<sup>5</sup> The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act"). On January 14, 2009, the Trust filed with the Commission pre-effective amendment 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 Fund (File Nos. 333-148082 and 811-22154) ("Registration Statement").

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. 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. 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.<sup>11</sup> The Exchange represents that the 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.<sup>12</sup> Finally, 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 the portfolio.<sup>13</sup>

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.

(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 Circular 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 Fund will be in compliance with Rule 10A-3 under the Act.<sup>14</sup>

(5) The Fund will not purchase or sell securities in markets outside the United States.

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 Section 6(b)(5) of the Act<sup>15</sup> 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,<sup>16</sup> 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 Fund.<sup>17</sup> The

Commission also notes that it has received no comments regarding the proposed rule change. The Commission finds that the proposed rule change does not raise any novel regulatory issues 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.

### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-NYSEArca-2009-22) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-10116 Filed 5-1-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59821; File No. SR-DTC-2009-05]

### Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Expanding the Scope and Timing To Collect and Pass-Through Fees Owed by Participants to American Depositary Receipt Agents

April 24, 2009.

#### I. Introduction

On February 25, 2009, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).<sup>1</sup> On March 16, 2009, the Commission published notice of the proposed rule change in the **Federal Register** to solicit comments from interested persons.<sup>2</sup> The Commission received no comment letters in response to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description

Prior to this rule change, DTC collected custody fees, called Depository Service Fees (“DSF”), from

<sup>11</sup> 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.

<sup>12</sup> The Exchange also represents that ABA, the Fund’s primary sub-adviser, is not affiliated with a broker-dealer, 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.

<sup>13</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

<sup>14</sup> See *supra* note 6.

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

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> See, e.g., Securities Exchange Act Release Nos. 58512 (September 11, 2008), 73 FR 53915 (September 17, 2008) (SR-NYSEArca-2008-85) (approving the listing and trading of shares of the PowerShares Active U.S. Real Estate Fund); and 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25) (approving the listing and trading of shares of the PowerShares Active AlphaQ Fund, PowerShares Active Alpha Multi-Cap Fund, and PowerShares Active Mega-Cap Portfolio, among other funds).

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 59540 (Mar. 9, 2009), 74 FR 11146.