

FINRA's intent when it filed SR-NASD-2007-018.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-FINRA-2009-045) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60549; File No. SR-NYSEArca-2009-75]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Permissible Expiration Dates for Flexible Exchange Options

August 20, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "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

The Exchange proposes to amend its rules regarding permissible expiration dates for Flexible Exchange Options ("FLEX Options").<sup>4</sup> 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of this proposal is to correct certain cross-references and modify the permissible expiration dates for FLEX Options. These options are governed by Flexible Exchange Options, Section 4 pursuant to the Rules of NYSE Arca, Inc. Under current NYSE Arca Rule 5.32, FLEX options may not expire on any business day that falls on, or within two business days of, a third Friday-of-the-month expiration day for any Non-FLEX Options (an "Expiration Friday").<sup>5</sup> However, subject to aggregation requirements<sup>6</sup> for cash settled options, the current FLEX Rules do permit the expiration of FLEX Options on the same day that Non-FLEX quarterly index options ("QIX") expire.

The Exchange is now proposing to eliminate the expiration date restriction so that FLEX Options may expire on any given business day. Although the expiration date restrictions would be eliminated, the Exchange notes that position and exercise limits under applicable NYSE Arca rules will continue to apply. FLEX Index Options remain subject to position limits under NYSE Arca Rules 6.8 and 5.35, as applicable. Additionally, all FLEX Options remain subject to the position reporting requirements of NYSE Arca

Rule 6.8. Moreover, the Exchange has the authority, pursuant to NYSE Arca Rule 5.25, to impose additional margin requirements as deemed advisable.

Beyond the above described position limit and reporting requirements for FLEX Options that expire on Expiration Friday, the proposed rule change includes an aggregation requirement under NYSE Arca Rule 5.35 for position limit purposes. Specifically, for as long as the options positions remain open, positions in FLEX Options that expire on Expiration Friday shall be aggregated with positions in Non-FLEX options on the same underlying (e.g., the same underlying security in the case of a FLEX Equity Option and the same underlying index in the case of a FLEX Index Option) (referred to as "Comparable Non-FLEX options"). Such FLEX Options and comparable Non-FLEX options would be subject to the position and exercise limits that are applicable to the Non-FLEX Options.<sup>7</sup> The aggregation requirement would apply to both cash and physically settled options.

In addition, in the case of FLEX Index Options only, the proposed rule change provides that FLEX Index Options expiring on or within two business days of an Expiration Friday may not have an exercise settlement value on the expiration date determined by reference to the closing price of the index or specified averages. Therefore, the exercise settlement value on such expiration dates may only be determined by a.m. settlement values. These limitations on exercise settlement value calculations are intended to serve as a safeguard against potential adverse effects that might be associated with triple witching.<sup>8</sup>

In conjunction with the elimination of the expiration date restriction, the proposed rule change also states that, provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX Options will be permitted in puts and calls that do not have the same exercise style, same expiration date and same exercise price

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<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.

<sup>4</sup> FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. FLEX Index Options Series may be approved and open for trading on any index that has been approved for Non-FLEX Options trading on the Exchange. FLEX Equity Options may be on underlying securities that have been approved by the Exchange in accordance with NYSE Arca Rule 5.3, which includes but is not limited to stock options and exchange-traded fund options. Both FLEX Index Options and FLEX Equity Options are subject to the FLEX rules in Section 4.

<sup>5</sup> For example, under the current rule, a FLEX Option could expire on the Tuesday before Expiration Friday, but could not expire on the Wednesday or Thursday before Expiration Friday. Similarly, a FLEX Option could expire on the Wednesday after Expiration Friday, but could not expire on the Monday or Tuesday after Expiration Friday. This restriction is hereinafter referred to as the "three business day" expiration restriction.

<sup>6</sup> See NYSE Arca Rule 5.35(b).

<sup>7</sup> Position Limits for Non-FLEX equity options are governed by NYSE Arca Rule 6.8; Exercise Limits for Non-FLEX equity options are governed by NYSE Arca Rule 6.9; Position Limits for Non FLEX index options are governed by Rules 5.15 and 5.16; Exercise Limits for Non Flex index options are governed by Rule 5.18.

<sup>8</sup> The expiration of the contracts for stock index futures, stock index options, and stock options all expire on the same days occurring on the third Friday of March, June, September, and December (which is referred to as "triple witching"). The Exchange's proposed limitations on p.m. exercise settlement values and exercise settlement values based on a specified average would apply during triple witching expirations, as well as on all other Expiration Fridays.

as Non-FLEX Options that are already available for trading on the same underlying security or index. The proposed rule change also provides that FLEX options will be permitted before (but not after) the options are listed for trading as Non-FLEX Options. Once and if an option series is listed for trading as a Non-FLEX Option series, (i) all existing open positions established under the FLEX Trading procedures shall be fully fungible with transactions in the respective Non-FLEX Options series, and (ii) any further trading in the series would be as Non-FLEX options subject to the Non-FLEX trading procedures and rules, as governed by Section 4.

For example, a FLEX trader could establish a FLEX Options position in a European-style, a.m.-settled Mini-Nasdaq 100 Index ("MNX") 210 Call Option Series with an expiration of August 19, 2011 (which will be an Expiration Friday). In such instance, once and if the Non-FLEX, European-style, a.m.-settled MNX 210 Call option series that expires on August 19, 2011 is listed for trading, the established FLEX Option position would be fully fungible with transactions in the Non-FLEX Option series. Any further trading in the series would be as Non-FLEX Options subject to the Non-FLEX trading procedures.

The Exchange will report any undue effects or unanticipated consequences that may occur due to the elimination of the blackout period.

NYSE Arca believes that expanding the eligible dates for FLEX expirations is important and necessary to the Exchange's efforts to create a product and market that provides OTP Holders<sup>9</sup> and investors interested in FLEX-type options with an improved but comparable alternative to the over-the-counter ("OTC") market in customized options, which can take on contract characteristics similar to FLEX options but are not subject to the same restrictions (such as the three business day expiration restriction or the p.m. settlement restriction).<sup>10</sup> By expanding the eligible expiration dates for FLEX Options, market participants will now have greater flexibility in determining whether to execute their customized options in an exchange environment or

in the OTC market. NYSE Arca believes market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness because of the role of The Options Clearing Corporation ("OCC") as issuer and guarantor of FLEX Options.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is found in Section 6(b)(5), in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, in that the proposed rule change will provide OTP Firms and OTP Holders and investors with additional opportunities to trade customized options in an exchange environment.

### *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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent

to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,<sup>13</sup> the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

Under Rule 19b-4(f)(6) of the Act,<sup>16</sup> a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange has requested that the Commission waive the 30-day operative date. The Exchange believes that waiver of the 30-day operative date will: (i) Permit the Exchange to offer investors additional opportunities to trade customized options in response to recent member requests; and (ii) level the current competitive landscape by permitting the Exchange to implement changes similar to those recently implemented by another self-regulatory organization. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and thus designates the proposal as operative upon filing.<sup>17</sup> The Commission notes that the Exchange's proposal is based on a similar proposed rule change adopted by the Chicago Board Options Exchange.<sup>18</sup> That proposal was subject to full notice and comment and no comments were received. Based on this, the Commission believes that it is appropriate to designate the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

<sup>13</sup> The Exchange has fulfilled this five day requirement.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> *Id.*

<sup>17</sup> For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). *See also* 17 CFR 200.30-3(a)(59).

<sup>18</sup> Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (SR-CBOE-2008-115).

<sup>9</sup> *See* NYSE Arca Rules 1.1(p) and 1.1(q).

<sup>10</sup> Through a Regulatory Services Agreement ("RSA") between NYSE Regulation, Inc. ("NYSE Regulation") and NYSE Arca, staff of NYSE Regulation conducts, among other things, surveillances of the NYSE Arca options trading platform for purposes of monitoring compliance with the relevant trading rules by NYSE Arca participants. NYSE Arca represents that, through this RSA, there is appropriate surveillance in place to monitor transactions in FLEX options.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

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-2009-75 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-2009-75. 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 20549-1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at <http://www.nyse.com>. 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-2009-75 and should be submitted on or before September 18, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60552; File No. SR-NYSEArca-2009-74]

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

August 20, 2009.

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 <http://www.nyx.com>, at the Exchange's principal office and at the Commission's Public Reference Room.

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

<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.

#### 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 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

<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(f)(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-2009-22) (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