

will therefore continue to file these reports with the NYSE.<sup>43</sup>

The Exchange proposes to correspondingly delete Rule 392—NYSE Amex Equities and adopt Rule 5190—NYSE Amex Equities in the form proposed by the NYSE, subject to such changes as are necessary to apply the Rule to the Exchange.

FINRA Rule Filing SR—FINRA—2008—057<sup>44</sup>

In accordance with FINRA 2008—057, the NYSE incorporated changes to proposed NYSE Rule 5190. As noted above, the Exchange proposes to adopt corresponding Rule 5190—NYSE Amex Equities in the form proposed by the NYSE, subject to such changes as are necessary to apply the Rule to the Exchange.

## 2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,<sup>45</sup> in general, and further the objectives of Section 6(b)(5) of the Act,<sup>46</sup> in particular, in that they 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 a national market system, and, in general, to protect investors and the public interest. The proposed rule changes also support the principles of Section 11A(a)(1)<sup>47</sup> of the Act in that they seek to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed rule changes are necessary and appropriate to conform the NYSE Amex Equities Rules with changes made to the corresponding NYSE Rules on which they are based. The Exchange also believes that the proposed rule changes will provide greater harmonization among NYSE Rules, NYSE Amex Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for their common members and member organizations. To the extent the Exchange has proposed changes that differ from the NYSE version of the Rules, such changes are

technical in nature and do not change the substance of the proposed NYSE Amex Equities Rules. The Exchange therefore believes that the proposed rule changes support the objectives of the Act by providing greater regulatory clarity and relieving unnecessary regulatory burdens.

### 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 such proposed rule change; or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## 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—NYSEALTR—2009—26 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—NYSEALTR—2009—26. 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 a.m. and 3 p.m. Copies of such 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—NYSEALTR—2009—26 and should be submitted on or before April 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>48</sup>

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

[FR Doc. E9-7590 Filed 4-3-09; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59650; File No. SR—NYSEArca-2009-24]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. To Adopt a Policy With Respect to the Treatment of Aberrant Trades

March 30, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Exchange Act")<sup>2</sup> and Rule 19b-4

<sup>43</sup> See SR—NYSE—2009—25 (formally submitted on March 9, 2009), as amended.

<sup>44</sup> See Securities Exchange Act Release No. 59097 (December 12, 2008), 73 FR 78412 (December 22, 2008) (SR—FINRA—2008—057).

<sup>45</sup> 15 U.S.C. 78f(b).

<sup>46</sup> 15 U.S.C. 78f(b)(5).

<sup>47</sup> 15 U.S.C. 78k-1(a)(1).

<sup>48</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.

thereunder,<sup>3</sup> notice is hereby given that, on March 18, 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, II, and III 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 governing NYSE Arca, LLC (also referred to as the “NYSE Arca Marketplace”), which is the equities trading facility of NYSE Arca Equities. The Exchange proposes to adopt, with retroactive effect to January 1, 2008, a policy relating to its treatment of trade reports that it determines to be inconsistent with the prevailing market.

### **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 Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

Trades in listed securities occasionally occur at prices that deviate significantly from prevailing market prices and those trades sometimes establish a high, low or last sale price for a security that does not reflect the true market for the security. NYSE Arca seeks to address such instances of “aberrant” trades by adopting a policy that is substantially similar to a policy of the New York Stock Exchange (the “NYSE Policy”).<sup>4</sup> On February 9, 2009, NYSE Arca also filed a proposed rule change, which it designated as eligible for immediate effectiveness pursuant to

Rule 19b-4(f)(6)<sup>5</sup> under the Exchange Act,<sup>6</sup> to adopt a policy relating to NYSE Arca’s treatment of trade reports that it determines to be inconsistent with the prevailing market.<sup>7</sup> The policy proposed in this instant rule change is identical to the policy set forth in SR-NYSEArca-2009-09, except that the instant proposal is retroactive to January 1, 2008. This retroactive application is identical to the retroactivity provision in the NYSE Policy.

The Consolidated Tape Association (“CTA”) offers each Participant in the CTA Plan the discretion to append an indicator (an “Aberrant Report Indicator”) to a trade report to indicate that the market believes that the trade price in a trade executed on that market does not accurately reflect the prevailing market for the security. The CTA recommends that data recipients should exclude the price of any trade to which the Aberrant Report Indicator has been appended from any calculation of the high, low and last sale prices for the security.

During the course of surveillance by the Exchange or as a result of notification by another market, listed company or market participant, the Exchange may become aware of trade prices that do not accurately reflect the prevailing market for a security. In such a case, the Exchange proposes to adopt as policies that it:

- May determine to append an Aberrant Report Indicator to any trade report with respect to any trade executed on the Exchange that the Exchange determines to be inconsistent with the prevailing market; and
- Shall discourage vendors and other data recipients from using prices to which the Exchange has appended the Aberrant Report Indicator in any calculation of the high, low or last sale price of a security.

NYSE Arca believes that retroactive application of its aberrant trade policy is warranted because of the significant market volatility and trade reporting issues that all market centers experienced during 2008. Therefore, NYSE Arca believes that it should be permitted to act retroactively to append the Aberrant Report Indicator to trades that do not accurately reflect the prevailing market for a security commencing as of January 1, 2008.

The Exchange will urge vendors to disclose the exclusion from high, low or

last sale price data of any aberrant trades excluded from high, low or last sale price information they disseminate and to provide to data users an explanation of the parameters used in the Exchange’s aberrant trade policy. Upon initial adoption of the Aberrant Report Indicator, the Exchange will also contact all of its listed companies to explain the aberrant trade policy and will notify users of the information that these are still valid trades. The Exchange will inform the affected listed company each time the Exchange or another market appends the Aberrant Report Indicator to a trade in an NYSE Arca listed stock and will remind the users of the information that these are still valid trades in that they were executed and not unwound as in the case of a clearly erroneous trade.

While the CTA disseminates its own calculations of high, low and last sale prices, vendors and other data recipients—and not the Exchange—frequently determine their own methodology by which they wish to calculate high, low and last sale prices. Therefore, the Exchange shall endeavor to explain to those vendors and other data recipients the deleterious effects that can result from including in the calculations a trade to which the Aberrant Report Indicator has been appended.

In making the determination to append the Aberrant Report Indicator, the Exchange shall consider all factors related to a trade, including, but not limited to, the following:

- Material news released for the security;
- Suspicious trading activity;
- System malfunctions or disruptions;
- Locked or crossed markets;
- A recent trading halt or resumption of trading in the security;
- Whether the security is in its initial public offering;
- Volume and volatility for the security;
- Whether the trade price represents a 52-week high or low for the security;
- Whether the trade price deviates significantly from recent trading patterns in the security;
- Whether the trade price reflects a stock-split, reorganization or other corporate action;
- The validity of consolidated tape trades and quotes in comparison to national best bids and offers; and
- The general volatility of market conditions.

In addition, the Exchange proposes that its policy shall be to consult with the listing exchange (if the Exchange is not the listing exchange) and with other

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

<sup>4</sup> See Securities Exchange Act Release No. 59064 (December 5, 2008), 73 FR 76082 (December 15, 2008) (SR-NYSE-2008-91).

<sup>5</sup> 17 CFR 240.19b-4(f)(6)

<sup>6</sup> 15 U.S.C. 78a et seq.

<sup>7</sup> See Securities Exchange Act Release No. 59453 (February 25, 2009), 74 FR 9463 (March 4, 2009) (SR-NYSEArca-2009-09).

markets (in the case of executions that take place across multiple markets) and to seek a consensus as to whether the trade price is consistent with the prevailing market for the security.

In determining whether trade prices are inconsistent with the prevailing market, the Exchange proposes that Exchange policy shall be to follow the following general guidelines: The Exchange will determine whether a trade price does not reflect the prevailing market for a security if the trade occurs during regular trading hours (i.e., 9:30 a.m. to 4 p.m.) and occurs at a price that deviates from the "Reference Price" by an amount that meets or exceeds the following thresholds:

Trade price	Numerical threshold
Between \$0 and \$15.00 .....	Seven Percent.
Between \$15.01 and \$50.00 .....	Five Percent.
In excess of \$50.00 .....	Three Percent.

The "Reference Price" refers to (a) if the primary market for the security is open at the time of the trade, the national best bid or offer for the security, or (b) if the primary market for the security is not open at the time of the trade, the first executable quote or print for the security on the primary market after execution of the trade in question. However, if the circumstances suggest that a different Reference Price would be more appropriate, the Exchange will use the different Reference Price. For instance, if the national best bid and offer for the security are so wide apart as to fail to reflect the market for the security, the Exchange might use as the Reference Price a trade price or best bid or offer that was available prior to the trade in question.

If the Exchange determines that a trade price does not reflect the prevailing market for a security and the trade represented the last sale of the security on the Exchange during a trading session, the Exchange may also determine to remove that trade's designation as the last sale. The Exchange may do so either on the day of the trade or at a later date, so as to provide reasonable time for the Exchange to conduct due diligence regarding the trade, including the consideration of input from markets and other market participants.

NYSE Arca advises that it proposes to use the Aberrant Report Indicator in accordance with the guidelines set forth above and that it may apply the Aberrant Trade Report on a retroactive basis commencing January 1, 2008.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,<sup>9</sup> in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

In particular, the Aberrant Report Indicator is consistent with the protection of investors and the public interest in that the Exchange will seek to ensure a proper understanding of the Aberrant Report Indicator among securities market participants by: (i) Urging vendors to disclose the exclusion from high, low or last sale price data of any aberrant trades excluded from high, low or last sale price information they disseminate and to provide to data users an explanation of the parameters used in the Exchange's aberrant trade policy; (ii) informing the affected listed company each time the Exchange or another market appends the Aberrant Report Indicator to a trade in an NYSE Arca listed stock; and (iii) reminding the users of the information that these are still valid trades in that they were executed and not unwound as in the case of a clearly erroneous trade.

### 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 Exchange Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

## 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.

## 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-2009-24 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2009-24. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such 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.

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR-NYSEArca-2009-24 and should be submitted on or before April 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-7584 Filed 4-3-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59651; File No. SR-NYSEArca-2009-22]

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

March 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on March 13, 2009, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (“NYSE Arca Equities” or “Corporation”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 list and trade the following under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”): The Grail American Beacon Large Cap Value ETF. 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.

#### 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>3</sup> (“Shares”) under NYSE Arca Equities Rule 8.600: The Grail American Beacon Large Cap Value ETF (“Fund”).<sup>4</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>5</sup> Grail Advisors, LLC (the “Manager”), a majority owned subsidiary of Grail Partners, LLC, acts as the Fund’s investment manager. The Fund is subadvised by American Beacon Advisors, Inc. (“ABA”). The Bank of New York Mellon Corporation is the administrator, Fund accountant, transfer agent and custodian for the Fund. ALPS

<sup>3</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>4</sup> The Commission previously approved listing and trading on the Exchange of the following actively managed funds under 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).

<sup>5</sup> The Trust is registered under the 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”). The description of the operation of the Trust herein is based on the Registration Statement.

Distributors, Inc. (the “Distributor”) serves as the distributor for the Fund.

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>6</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>7</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 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 the portfolio.<sup>8</sup>

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

<sup>7</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, “fire wall” 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.

<sup>8</sup> The Exchange represents that Grail Advisors, LLC, as the investment adviser of the Fund, and its related personnel, are subject to Investment

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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