

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>9</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members because all members and member organizations would be assessed the same fee for penny options routed to and executed on NYSEArca. Further, the Exchange's proposal to eliminate the current Phlx XL II Options Routing Pass-Through Fees and instead assess the \$0.50 Routing Fee for orders routed to NYSEArca would assist the Exchange in recouping costs incurred in executing orders for its members in penny classes at NYSEArca. The Exchange believes that this fee would enable it to recoup the majority of costs associated with routing customer orders on behalf of its members.

### 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 not necessary or appropriate in furtherance of the purposes of the Act.

As an initial matter, all members of the Exchange will be subject to the same fee for routing customer orders to NYSE Arca for execution.

The Exchange's system will continue to route customer orders to better-priced away markets, including NYSEArca.<sup>10</sup> The proposed fees are intended to recoup the unusually high cost of such routing, and will not have the effect of burdening competition. Currently, when the Exchange properly routes customer orders to NYSEArca, the burden falls on the Exchange to pay the high transaction and clearing costs associated therewith, while its competitor benefits wholly from the Exchange ensuring that it will not trade through its competitors' markets. As stated above, the costs associated with routing customer orders to NYSEArca for execution are burdensome. The proposed fee change is intended to remove that burden from the Exchange, will not have any effect at all on the Exchange's system in properly routing customer orders to all markets disseminating the NBBO,

including NYSEArca, and thus is not unfairly discriminatory.

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

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and paragraph (f)(2) of Rule 19b-4<sup>12</sup> thereunder. 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, 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-Phlx-2010-01 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-Phlx-2010-01. 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,<sup>13</sup> 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 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-Phlx-2010-01 and should be submitted on or before February 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61365; File No. SR-NYSEArca-2009-114]

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

January 15, 2010.

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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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,

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> For a detailed description of the Exchange's Phlx XL II system, see Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

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

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

<sup>14</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.

2009.<sup>3</sup> 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.<sup>4</sup> Grail Advisors, LLC is each Fund's investment 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 Shares<sup>5</sup> and that the Shares will comply with Rule 10A-3 under the Act,<sup>6</sup> 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.<sup>7</sup>

### II. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the

<sup>3</sup> See Securities Exchange Act Release No. 61227 (September 3, 2009), 74 FR 69175 ("Notice").

<sup>4</sup> 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 for the Trust filed with the Commission on October 5, 2009 (File Nos. 333-148082 and 811-22154) ("Registration Statement").

<sup>5</sup> 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.

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

<sup>7</sup> See *supra* notes 3 and 4.

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 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,<sup>11</sup> 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 such NAV (the "Bid/Ask Price"),<sup>12</sup> 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

<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>11</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>12</sup> 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.

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.<sup>13</sup> 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.<sup>14</sup> 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>15</sup> 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

<sup>13</sup> See NYSE Arca Equities Rule 8.600(d)(1)(B).

<sup>14</sup> See NYSE Arca Equities Rule 8.600(d)(2)(D).

<sup>15</sup> *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.

information regarding the actual components of each of the portfolios.<sup>16</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(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 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,<sup>17</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 Funds.<sup>18</sup> 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.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> 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.<sup>20</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61381, File No. SR-MSRB-2009-18]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Consisting of Amendments to Rule G-37 (Political Contributions and Prohibitions on Municipal Securities Business) and Rule G-8 (Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers)

January 20, 2010.

On December 4, 2009, the Municipal Securities Rulemaking Board ("MSRB"), 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 consisting of proposed amendments to Rule G-37 (political contributions and prohibitions on municipal securities business) and Rule G-8 (books and records to be made by brokers, dealers and municipal securities dealers). The proposed rule change was published for comment in the **Federal Register** on December 18,

2009.<sup>3</sup> The Commission received no comment letters. This order approves the proposed rule change.

The proposed amendments to Rule G-37 would require the public disclosure of contributions to bond ballot campaigns made by dealers, municipal finance professionals ("MFPs"), their political action committees ("PACs") and non-MFP executive officers on MSRB Form G-37. Dealers would be required to report on revised Form G-37 the official name of each bond ballot campaign receiving contributions during such calendar quarter, the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, the contribution amount made and the category of contributor. The proposal would provide a *de minimis* exception from the reporting of contributions on Form G-37 made by an MFP or non-MFP executive officer to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if all contributions by such person to such bond ballot campaign, in total, do not exceed \$250 per ballot initiative. The amendments would parallel the existing disclosure requirements for contributions to issuer officials and state and local political parties. Such amendments would not, however, provide for a ban on municipal securities business as a result of contributions to bond ballot campaigns.

The proposed amendments to Rule G-8 would require dealers to create and maintain records of the non-*de minimis* contributions to bond ballot campaigns that would be required to be disclosed on Form G-37 under the proposed amendments to Rule G-37. The MSRB requested that the proposed rule change become effective on, and would apply solely to contributions made on or after, the first business Monday at least five business days after Commission approval. A full description of the proposal is contained in the Commission's Notice.

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB<sup>4</sup> and, in particular, the requirements of

<sup>18</sup> 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).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</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.

<sup>3</sup> See Securities Exchange Act Release No. 61155 (Dec. 11, 2009), 74 FR 67285 (December 18, 2009) ("Commission's Notice").

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>16</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

<sup>17</sup> 15 U.S.C. 78s(b)(2).