

writing within 60 days of this publication.

Please direct your written comment to Thomas A. Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: February 7, 2011.

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-3187 Filed 2-11-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request; Copies Available

From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 433, OMB Control No. 3235-0617, SEC File No. 270-558.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Rule 433 (17 CFR 230.433) governs the use and filing of free writing prospectuses under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The purpose of Rule 433 is to reduce the restrictions on communications that a company can make to investors during a registered offering of its securities, while maintaining a high level of investor protection. A free writing prospectus meeting the conditions of Rule 433(d)(1) must be filed with the Commission and is publicly available. We estimate that it takes approximately 1.3 burden hours per response to prepare a free writing prospectus and that the information is filed by 2,906 respondents approximately 1.25 times a year for a total of 3,633 responses. We estimate that 25% of the 1.3 burden hours per response (0.32 hours) is prepared by the company for total annual reporting burden of 1,163 hours (0.32 hours × 3,633 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the

information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Thomas A. Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: February 7, 2011.

**Cathy H. Ahn,**

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63855; File No. SR-NYSE-2011-02]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Forms of Broker Letters Set Forth in Exchange Rule 451 and Sections 905.02 and 905.03 of the Exchange's Listed Company Manual

February 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on January 26, 2011, New York Stock Exchange LLC ("NYSE" or "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 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 amend Exchange Rule 451 and Sections 905.02 and 905.03 of the Exchange's Listed Company Manual (the "Manual") to

amend the forms of letters contained in those rules to reflect the recent amendments to the Exchange's broker voting rules in relation to executive compensation proposals. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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

The Exchange recently amended Exchange Rule 452 and Section 402.08 of the Manual to provide that brokers which are record holders of shares held in client accounts will no longer be permitted to vote those shares on matters relating to executive compensation.<sup>3</sup> This amendment was made in accordance with the requirements of Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

Supplementary Material .20 to Exchange Rule 451 and Sections 905.01, 905.02 and 905.03 contain specimens of letters containing the information and instructions required pursuant to the proxy rules to be given by NYSE member organizations to clients where the member organization is the record holder of shares beneficially owned by those clients in the circumstances where a broker (i) may vote on all proposals without voting instructions (Section 905.01), (ii) may not vote on any proposals without instructions (Section 905.02), and (iii) may vote on certain but not all proposals without instructions (Section 905.03). These letters are shown as examples and not as prescribed forms. Member organizations are permitted to adapt the

<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. 62874 (September 9, 2011) 75 FR 56152 (September 15, 2011) (SR-NYSE-2011-59).

form of these letters for their own purposes provided all of the required information and instructions are clearly enumerated in letters to clients.

The Exchange is concerned that many shareholders receiving proxy materials from their brokers for meetings scheduled after effectiveness of the amendments to the NYSE broker voting rules in relation to executive compensation proposals will not be aware of those amendments and may therefore assume that the broker as record holder will vote their shares on such proposals if they do not return voting instructions to their broker. The NYSE believes it is important for as many shares as possible to be voted on such proposals and, therefore, believes it is important to educate retail investors with respect to the implications of their failure to return voting instructions under the amended rules. Consequently, the Exchange proposes to amend the forms of letters provided for use in connection with meetings where the broker may vote on none of the proposals before the meeting and meetings where the broker may vote on some but not all of the proposals before the meeting. The proposed amendments will insert language in those forms to alert beneficial holders that brokers will no longer be able to vote uninstructed shares on executive compensation matters. To limit the length of the letters, the Exchange proposes to modify language previously added with respect to the fact that brokers could no longer vote uninstructed shares on the election of directors for meetings scheduled after January 1, 2010.<sup>4</sup> References to the new treatment of executive compensation proposals and director elections will be combined.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>5</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</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, and is

not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed amendments are consistent with the investor protection objectives of the Act in that their sole purpose is to explain to shareholders the implications of failing to provide voting instructions to their brokers, thereby enabling them to make a more informed decision with respect to the exercise of their voting rights.

### *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

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, 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>7</sup> the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the

Commission shall institute proceedings to determine whether the proposed rule change should be approved or 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-NYSE-2011-02 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-NYSE-2011-02. 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 Web site viewing and printing 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-NYSE-2011-02 and should be submitted on or before March 7, 2011.

<sup>4</sup> See Securities Exchange Act Release No. 61046 (November 20, 2009), 74 FR 62849 (December 1, 2009) (SR-NYSE-2009-114).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> The Commission notes that the Exchange has satisfied the five-day pre-filing requirement.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

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

**Cathy H. Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63856; File No. SR-NYSEArca-2010-117]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To List and Trade Shares of the Grail Western Asset Ultra Short Duration ETF

February 7, 2011.

#### I. Introduction

On December 13, 2010, NYSE Arca, Inc. ("Exchange") 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 Western Asset Ultra Short Duration ETF ("ETF" or "Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the *Federal Register* on December 28, 2010.<sup>3</sup> The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to list and trade the Shares of the Fund under NYSE Arca Equities Rule 8.600. The ETF will be an actively managed exchange traded fund and is a series of Grail Advisors ETF Trust ("Trust"). The Trust is registered with the Commission as an investment company.<sup>4</sup> Grail Advisors, LLC is the Fund's investment manager ("Manager"). Western Asset Management Company is the sub-adviser ("Western Asset" or "Sub-Adviser") of the ETF. The Bank of New York Mellon Corporation is the administrator, Fund accountant, transfer agent and custodian for the ETF. ALPS Distributors, Inc. serves as the

distributor of Creation Units for the Fund on an agency basis.

The investment objective of the ETF is maximum current income, consistent with preservation of capital and daily liquidity. Under normal circumstances, the ETF will invest primarily in short-term, investment grade fixed income securities. Typically, the ETF will invest in money market securities and short-term debt securities, including U.S. treasuries and agencies, corporate and bank obligations, asset backed and mortgage backed instruments, commercial paper and other highly rated, short maturity securities. While the ETF may invest in securities of any maturity, under normal circumstances, the average duration of the portfolio is typically expected to be one year or less. Duration is a measure of the underlying portfolio's price sensitivity to changes in interest rates.

The ETF invests primarily in investment grade securities (Baa or higher by Moody's; BBB or higher by Standard & Poor's) that are rated by at least one nationally recognized statistical rating organization rating that security or, if unrated, determined by Western Asset to be of comparable quality. The ETF may invest only in U.S. dollar-denominated securities.

The ETF may invest in derivative instruments, such as futures and interest rate, total return and credit default swaps.<sup>5</sup> The ETF will not invest in non-U.S. equity securities.

The ETF may not invest more than 15% of its net assets in: (1) illiquid securities;<sup>6</sup> and (2) unregistered securities, including Rule 144A securities (which include time deposits and repurchase agreements that mature in more than seven days).<sup>7</sup>

The ETF may invest in mortgage- or other asset-backed securities. Mortgage backed securities in which the Fund invests will be investment grade. Mortgage-related securities include mortgage pass-through securities, collateralized mortgage obligations ("CMOs"), commercial mortgage-backed securities, mortgage dollar rolls, CMO residuals, stripped mortgage-backed securities and other securities that directly or indirectly represent a

<sup>5</sup> Investments in derivatives must be consistent with the ETF's investment objective and may only be used to manage risk and not to enhance leverage.

<sup>6</sup> For this purpose, "illiquid securities" are securities that the ETF may not sell or dispose of within seven days in the ordinary course of business at approximately the amount at which the ETF has valued the securities.

<sup>7</sup> See e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, and Andrew Madar, Senior Special Counsel, Commission, dated February 2, 2011.

participation in, or are secured by and payable from, mortgage loans on real property.

Additional information regarding the Fund and the Shares, the investment strategies, risks, creation and redemption procedures, fees, portfolio holdings and disclosure 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>8</sup>

#### III. 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>9</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>11</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>12</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 regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association. In addition, an estimated value, defined in NYSE Arca Equities Rule 8.600 as the Portfolio Indicative Value ("PIV") that reflects an estimated intraday value of the ETF's portfolio, will be updated and disseminated by

<sup>8</sup> See Notice and Registration Statement, *supra* notes 3 and 4.

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</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. See 15 U.S.C. 78c(f).

<sup>11</sup> 17 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

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

<sup>11</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. 63581 (December 20, 2010), 75 FR 81692 ("Notice").

<sup>4</sup> See Preliminary Prospectus on Form N-1A for the Trust, dated August 31, 2010 (File Nos. 333-148082 and 811-22154) ("Registration Statement"). The descriptions of the ETF and the Shares contained herein are based on information in the Registration Statement.