

and the reduced value Nasdaq-100® Index (Mini-NDX® Index (MNX)).<sup>6</sup> The Agreement established a license fee, currently \$0.16 per contract, payable by BOX to NASDAQ OMX, for NDX and MNX options contracts traded on BOX.<sup>7</sup>

This Agreement between BOX and NASDAQ OMX was set to expire on December 31, 2009. BOX and NASDAQ OMX have entered into an extension of the Agreement whereby a six (6) cent increase in the per contract license fee charged to BOX by NASDAQ OMX has been agreed to.

The Exchange is submitting this proposed rule change to increase the surcharge fee for transactions in NDX and MNX options by six (6) cents, to \$0.22. This increase will correspondingly offset the increased costs incurred by BOX. As with certain other licensed options, the Exchange adopted and maintains a surcharge fee for trading in these options to defray the licensing costs. The Exchange believes that charging BOX Options Participants that trade these instruments is the most equitable means of recovering the costs of the license.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>8</sup> in general, and Section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

make no warranty, express or implied, as to results to be obtained by licensee, owners of the product(s), or any other person or entity from the use of the Nasdaq-100 Index® or any data included therein. The Corporations make no express or implied warranties, and expressly disclaim all warranties of merchantability or fitness for a particular purpose or use with respect to the Nasdaq-100 Index® or any data included therein. Without limiting any of the foregoing, in no event shall the Corporations have any liability for any lost profits or special, incidental, punitive, indirect or consequential damages, even if notified of the possibility of such damages.

<sup>6</sup> *Id.*

<sup>7</sup> On November 14, 2006 the Exchange established a \$0.15 surcharge fee for transactions in options on NDX and MNX. See Securities Exchange Act Release No. 55000 (December 21, 2006), 71 FR 78479 (December 29, 2006) (SR-BSE-2006-47). The Exchange subsequently increased the surcharge fee to \$0.16 in response to a corresponding increase in the license fees charged by NASDAQ OMX to BOX. See Securities Exchange Act Release No. 57114 (January 8, 2008), 73 FR 2961 (January 16, 2008) (SR-BSE-2008-01).

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

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

any burden on competition 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

The Exchange has neither solicited nor received comments on the proposed rule change.

### 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 Exchange Act<sup>10</sup> and Rule 19b-4(f)(2) thereunder,<sup>11</sup> because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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-BX-2009-083 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-BX-2009-083. 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 publicly available. All submissions should refer to File Number SR-BX-2009-083 and should be submitted on or before January 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61231; File No. SR-FINRA-2009-092]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Date by Which Eligible Registrants Must Complete a Firm-Element Continuing Education Program To Qualify To Engage in a Security Futures Business

December 23, 2009.

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> notice is hereby given that on December 18, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. The Commission is

<sup>12</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>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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**

FINRA is proposing to amend NASD Rule 1022 (Categories of Principal Registration) and NASD Rule 1032 (Categories of Representative Registration) to extend to December 31, 2012 the date by which eligible registrants must complete a firm-element continuing education program to qualify to engage in a security futures business.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, on the Commission's Web site at <http://www.sec.gov>, 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, FINRA 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 these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### **A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

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

In 2003 [sic], FINRA modified the following registration categories to include the activities of engaging in and supervising securities futures: (1) Registered Options Principal (Series 4); (2) Limited Principal—General Securities Sales Supervisor (Series 9/10); (3) General Securities Representative (Series 7); and (4) Registered Options Representative (Series 42).<sup>3</sup> FINRA also required that persons currently registered or becoming registered in these categories complete a firm-element continuing education requirement addressing security futures before they conducted any security futures business. FINRA instituted this continuing education requirement to ensure that registered

personnel, who may not be familiar with risks, trading characteristics, terms and nomenclature of these products, or the fact that they are subject to the joint jurisdiction of the SEC and CFTC, receive the necessary training.

FINRA initially considered replacing the firm-element continuing education requirement with revised qualification examinations for these categories that addressed security futures, however, such qualification examinations have not been implemented. In 2006, FINRA amended NASD Rule 1022 (Categories of Principal Registration) and Rule 1032 (Categories of Representative Registration) to extend the date by which eligible registrants must complete the firm-element continuing education requirement to engage in a security futures business from December 31, 2006 to December 31, 2009.<sup>4</sup> In view of the fact that there are no revised qualification examinations addressing security futures, FINRA intends to continue to require eligible registrants to complete the mandated firm-element continuing education requirement before engaging in any security futures business. The proposed rule change amends NASD Rule 1022 (Categories of Principal Registration) and NASD Rule 1032 (Categories of Representative Registration) to extend the date by which eligible registrants must complete the firm-element continuing education requirement to engage in a security futures business from December 31, 2009 to December 31, 2012.<sup>5</sup>

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be December 31, 2009.

##### **2. Statutory Basis**

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>6</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is necessary to continue to allow

<sup>4</sup> See Securities Exchange Act Release No. 54617 (October 17, 2006), 71 FR 62498 (October 25, 2006) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-2006-118).

<sup>5</sup> The Commission notes that FINRA has proposed to amend its rule text to provide that, as of December 31, 2009, for eligible registrants, the deadline for completing a firm-element continuing education program in order to qualify to engage in security futures activities is the earlier of December 31, 2012, or one business day prior to the date a new examination that includes security futures products is offered.

<sup>6</sup> 15 U.S.C. 78o-3(b)(6).

eligible registrants to complete a firm-element continuing education program that will qualify them to engage in a security futures business.

#### **B. Self-Regulatory Organization's Statement on Burden on Competition**

FINRA does not believe that the proposed rule change will result in 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**

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

The Exchange has requested that the Commission waive the 30-day operative delay to permit the proposed rule change to become operative on December 31, 2009. The Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest because the waiver will keep in place the ability of registered persons to qualify to sell security futures by completing a firm-element continuing education program in lieu of an exam. Therefore, the Commission designates the proposal operative on December 31, 2009.<sup>9</sup>

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>3</sup> See Securities Exchange Act Release No. 46663 (October 15, 2002), 67 FR 64944 (October 22, 2002) (Order Approving File No. SR-NASD-2002-40).

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-FINRA-2009-092 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-FINRA-2009-092. 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 FINRA. 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-FINRA-2009-092 and should be submitted on or before January 20, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61227; File No. SR-NYSEArca-2009-114]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing of Grail McDonnell Fixed Income ETFs

December 22, 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 thereunder,<sup>3</sup> notice is hereby given that on December 16, 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

Pursuant to the provisions of Section 19(b)(1) of the Exchange Act, NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities" or the "Corporation"), proposes to list and trade the shares of the following funds under NYSE Arca Equities Rule 8.600: Grail McDonnell Intermediate Municipal Bond ETF and the Grail McDonnell Core Taxable Bond ETF (each an "ETF" and, collectively, the "ETFs"). The shares of the ETFs are collectively referred to herein as the "Shares."

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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

NYSE Exchange proposes to list and trade the Shares of the ETFs under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.<sup>4</sup> Each of the ETFs will be an actively managed exchange traded fund each of which is a series of Grail Advisors ETF Trust ("Trust"). The Trust is registered with the Commission as an investment company.<sup>5</sup>

<sup>4</sup> The Commission approved NYSE Arca Equities Rule 8.600 and the listing and trading of certain funds of the PowerShares Actively Managed Funds Trust on the Exchange pursuant to Rule 8.600 in Securities Exchange Act Release No. 57619 (April 4, 2008) 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25). The Commission also previously approved listing and trading on the Exchange, or trading on the Exchange pursuant to unlisted trading privileges ("UTP") of the following actively managed funds under Rule 8.600: Securities Exchange Act Release Nos. 57626 (April 4, 2008), 73 FR 19923 (April 11, 2008) (SR-NYSEArca-2008-28) (order approving trading on the Exchange pursuant to UTP of Bear Stearns Active ETF); 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); 59826 (April 28, 2009), 74 FR 20512 (May 4, 2009) (SR-NYSEArca-2009-22) (order approving Exchange listing and trading of Grail American Beacon Large Cap Value ETF; 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR-NYSEArca-2009-55) (order approving Exchange listing and trading of Dent Tactical ETF); 60717 (September 24, 2009), 74 FR 50853 (October 1, 2009) (SR-NYSEArca-2009-74) (order approving listing of four Grail Advisors RP ETFs); 60975 (November 10, 2009), 74 FR 59590 (November 18, 2009) (SR-NYSEArca-2009-83) (order approving listing of Grail American Beacon International Equity ETF); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (order approving listing of five fixed income funds of the PIMCO ETF Trust).

<sup>5</sup> See Registration Statement on Form N-1A for the Trust filed with the Securities and Exchange Commission on October 5, 2009 (File Nos. 333-148082 and 811-22154) (the "Registration Statement"). The descriptions of the ETFs and the

Continued

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