

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60975; File No. SR-NYSEArca-2009-83)

November 10, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change to List and Trade Shares of the Grail American Beacon International Equity ETF

On September 18, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the Grail American Beacon International Equity ETF (“Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published in the Federal Register on October 9, 2009.³ The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

I. Description of the Proposal

The Exchange proposes to list and trade the Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing of Managed Fund Shares.⁴ The Shares will be offered by Grail Advisors’ ETF Trust (“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.⁵ Grail Advisors, LLC (“Manager”), a majority owned subsidiary of Grail Partners,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60773 (October 2, 2009), 74 FR 52288 (“Notice”).

⁴ See NYSE Arca Equities Rule 8.600.

⁵ The Exchange states that the Trust is registered under the Investment Company Act of 1940 (“1940 Act”) and that, on April 29, 2009, the Trust filed with the Commission pre-effective Amendment No. 3 to its registration statement on Form N-1A under the

LLC, is the Fund’s investment manager, and American Beacon Advisors, Inc. (“ABA”) is the Fund’s sub-adviser.⁶ In addition, Lazard Asset Management LLC, Templeton Investment Counsel, LLC, and The Boston Company Asset Management, LLC (collectively, “Other Sub-Advisers”) each is a sub-adviser to the Fund and each is affiliated with a broker-dealer. The Exchange states that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600 and that the Fund will be in compliance with Rule 10A-3 under the Act.⁷

The Fund’s investment objective is long-term capital appreciation. It seeks to achieve its investment objective by investing at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in common stocks and securities convertible into common stocks of issuers based in at least three different countries located outside the United States. The Fund will primarily hold securities of large capitalization companies⁸ that have last sale reporting in the countries in which it invests and will primarily invest in countries in the Morgan Stanley Capital International Europe Australasia Far East Index.

Creations and redemptions of Fund Shares will generally be in-kind, with a specified cash component. Authorized Participants or the investors on whose behalf the Authorized Participants are acting (“Investors”), however, may deliver in connection with creations or receive in connection with redemptions cash in lieu of one or more in-kind securities. Specifically, in

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”).

⁶ The Exchange represents that, while ABA is not affiliated with a broker-dealer, the Manager is affiliated with a broker-dealer, Grail Securities, LLC.

⁷ 17 CFR 240.10A-3.

⁸ The Fund considers companies with market capitalizations of more than \$1 billion to be large capitalization companies. Thus, at least 50% of the Fund’s assets invested in securities of companies will be in companies with market capitalizations of more than \$1 billion.

connection with creations or redemptions, an Authorized Participant or Investor may transact in cash, in whole or in part, at the sole discretion of the Fund; provided, however, that the cash amount delivered or received shall not exceed 10% of the value of the in-kind creation or redemption basket, unless the Authorized Participant or Investor is subject to legal restrictions with respect to delivery or receipt of one or more securities in the in-kind creation or redemption basket, or the Fund is in a temporary defensive position. The creation unit size for the Fund will be 50,000 Shares.

Additional information regarding the Fund, the Shares, the Fund's investment objective (including other non-primary investments and investments permitted for temporary defensive purposes), investment strategies, policies, and restrictions, risks, fees and expenses, creations and redemptions of Shares, 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.⁹

II. 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 Act¹⁰ and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹² which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove

⁹ See supra notes 3 and 5.

¹⁰ 15 U.S.C. 78f.

¹¹ 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).

¹² 17 U.S.C. 78f(b)(5).

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 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, 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 ("CTA") high-speed line, and the Exchange will disseminate the Portfolio Indicative Value ("PIV") at least every 15 seconds during the Core Trading Session through the facilities of the CTA. In addition, the Fund will make available on its Web site on each business day before commencement of trading of the Core Trading Session the Disclosed Portfolio¹³ that will form the basis for its calculation of the net asset value ("NAV"), which will be determined as of the close of the regular trading session on the New York Stock Exchange (ordinarily 4:00 p.m. Eastern Time) on each business day. In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange via the National Securities Clearing Corporation. The Fund's Web site will also include additional quantitative information updated on a daily basis relating to trading volume, prices, and NAV. Information regarding the market price and trading volume of the Shares will be continually

¹³ The Exchange represents that the Fund will disclose on the Fund's Web site for each portfolio security or other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

available on a real-time basis throughout the day via 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 to list and trade the Shares 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 of the Shares 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. 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. 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.¹⁴ The Exchange states that each sub-adviser to the Fund has represented that they have implemented a “fire wall” between it and its respective broker-dealer affiliate(s) with respect to access to information concerning the composition and/or changes to the Fund's portfolio.¹⁵ Finally, the Commission notes that the Reporting Authority that provides the

¹⁴ See NYSE Arca Equities Rule 8.600(d)(2)(D). The Exchange states that 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 Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

¹⁵ See supra note 6 and accompanying text. Commentary .07 to NYSE Arca Equities Rule 8.600 requires that, if an investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser erect a “fire wall”

Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.¹⁶

The Exchange has represented that the Shares are equity securities subject to the Exchange's rules governing the trading of equity securities and will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). 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.
- (2) The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. 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. The Exchange's current trading surveillance focuses on detecting securities trading

between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to the investment company portfolio. Commentary .07 also requires personnel, who make decisions on the investment company'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. See Commentary .07 to NYSE Arca Equities Rule 8.600. The Exchange represents that 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. The Exchange further represents that Grail Advisors, LLC, as the investment adviser of the Fund, and each of the sub-advisers of the Fund, and their respective personnel, are subject to Investment Advisers Act Rule 204A-1.

¹⁶ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange may obtain information via the Intermarket Surveillance Group (“ISG”) from other exchanges that are members of ISG.¹⁷ In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

- (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 Circular will discuss the following: (a) the procedures for purchases and redemptions of Shares and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which

¹⁷ The Exchange represents that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG, and the Exchange may not have in place comprehensive surveillance sharing agreements with such markets. The Commission notes that the Fund will be investing primarily in securities of foreign large capitalization companies with market capitalizations of more than \$1 billion and that are subject to last-sale reporting. In addition, the Commission notes that though, an Authorized Participant may transact in cash, in whole or in part, with the Fund in connection with creations or redemptions, the cash amount delivered or received may not exceed 10% of the value of the in-kind creation or redemption basket, subject to certain limited conditions.

The Commission further notes that the Fund, as an investment company registered under the 1940 Act, is subject to the diversification standards included in Section 5(b)(1) of the 1940 Act. The Exchange represents that the Fund’s fundamental policies, which may be changed only by a vote of the holders of a majority of the Fund’s outstanding voting securities, are as follows: (1) regarding diversification, the Fund may not invest more than 5% of its total assets (taken at market value) in securities of any one issuer, other than obligations issued by the U.S. Government, its agencies and instrumentalities, or purchase more than 10% of the voting securities of any one issuer, with respect to 75% of the Fund’s total assets; and (2) regarding concentration, the Fund may not invest more than 25% of its total assets in the securities of companies primarily engaged in any one industry or group of industries provided that (a) this limitation does not apply to obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities, and (b) municipalities and their agencies and authorities are not deemed to be industries.

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 Fund will be in compliance with Rule 10A-3 under the Act.¹⁸

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 Section 6(b)(5) of the Act¹⁹ and the rules and regulations thereunder applicable to a national securities exchange.

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-NYSEArca-2009-83) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Florence E. Harmon
Deputy Secretary

¹⁸ See supra note 7.

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).