

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63856; File No. SR-NYSEArca-2010-117)

February 7, 2011

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

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

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<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. 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.

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>

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<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.

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 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

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<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.

<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).

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 one or more major market data vendors at least every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. to 4:00 p.m. Eastern Time ("ET"). On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets ("Disclosed Portfolio") held by the ETF that will form the basis for the ETF's calculation of the net asset value ("NAV") at the end of the

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

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

business day.<sup>13</sup> The Web site and information will be publicly available at no charge.

Information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section 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. In addition, if the Exchange becomes aware that the NAV or the Disclosed Portfolio is not disseminated to all market information as the NAV is available to all market participants.<sup>14</sup> In addition, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which an interruption to the dissemination to the PIV occurs; if the interruption to the dissemination of the PIV persists past the trading 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> Moreover, the Exchange represents

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<sup>13</sup> On a daily basis, the ETF will disclose on the ETF's Web site for each portfolio security or other financial instrument of the ETF 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.

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

<sup>15</sup> See id. Trading 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 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.

that the Manager and the Sub-Adviser each is affiliated with a broker-dealer and has implemented a “fire wall” with respect to the affiliated broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio. Any additional Fund sub-advisers that are affiliated with a broker-dealer will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the 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 information regarding the actual components of the portfolio.<sup>16</sup>

The Exchange has represented that the Shares are deemed to be equity securities subject to the Exchange’s existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

- (1) The Fund will meet the initial and continued listing requirements under NYSE Arca Equities Rule 8.600(d).
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) 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.
- (4) 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

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

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.

- (5) For initial and/or continued listing, the Shares must be in compliance with Rule 10A-3<sup>17</sup> under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3.
- (6) The ETF will not invest in non-U.S. equity securities.
- (7) A minimum of 100,000 Shares of the Fund will be outstanding as of the start of trading on the Exchange.

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 Act<sup>18</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the

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

<sup>18</sup> 15 U.S.C. 78f(b)(5).

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

proposed rule change (SR-NYSEArca-2010-117), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).