

## NUCLEAR REGULATORY COMMISSION

[NRC–2009–0504; Docket No. 030–29462]

### Notice of Availability of Environmental Assessment and Finding of No Significant Impact Related to the Approval for the Department of the Navy To Issue an Amendment to a Materials Permit for the Unrestricted Release of Building 150 at the Naval Medical Research Center in Bethesda, Maryland, Under Byproduct Materials License No. 45–23645–01NA

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Environmental Assessment and Finding of No Significant Impact for Permit Amendment.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering allowing the Department of the Navy (Navy) to issue an amendment to a materials permit in accordance with NRC Byproduct Materials License No. 45–23645–01NA. The NRC approval would authorize the Navy to release, for unrestricted use, Building 150 at the Naval Medical Research Center in Bethesda, Maryland. The Navy requested this action by letter July 11, 2008. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, *Code of Federal Regulations* (CFR), Part 51 (10 CFR part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The proposed action will be taken following the publication of this FONSI and EA in the **Federal Register**.

##### II. Environmental Assessment

###### *Identification of Proposed Action*

The proposed action would approve the Navy's July 11, 2008, request to release Building 150 at the Naval Medical Research Center (NMRC) in Bethesda, Maryland (the Facility) for unrestricted release. The Navy

completed initial decommissioning of the Facility (excluding Building 150) in Bethesda, Maryland, in 2000. The NMRC was authorized to use licensed materials under Naval Radioactive Materials Permit 19–32398–41NP in accordance with the Navy's Master Materials License No. 45–23645–01NA. In the conduct of that initial decommissioning action the Navy requested authorization to postpone decommissioning activities at Building 150. Additionally, two underground storage tanks (USTs) were discovered during the decommissioning of the NMRC, and remediation of the USTs were added to the Navy's decommissioning work plan for Building 150.

Building 150 was constructed in the early 1950s as a facility for the irradiation of animals to determine the effects of ionizing radiation on the organ and cellular systems. The radiation source used for these studies consisted of 2,500 curies of cobalt-60 in ceramic slugs arranged in circles. AEC License No. 19–02891–03 was issued on October 2, 1957, authorizing the use of cobalt-60 for this research. License No. 19–02891–03 expired on March 31, 1963.

Building 150 is located on the grounds of the NMRC. The Facility consists of a 1,100 square foot building, with approximately one foot thick reinforced concrete walls. The building was divided into two radiation exposure rooms and a control room. The building is covered with a 10 inch thick overhead reinforced concrete slab. The control room is separated from the two radiation rooms by a 3 feet 10 inch thick radiation shield, constructed of reinforced barite concrete which is 45 pounds heavier per cubic foot than regular reinforced concrete. Radiation room 1, where the sources were stored, was further shielded by a 3 foot thick barite concrete wall.

Several minor contamination incidents occurred during routine maintenance between 1951 and 1962, probably caused by cracks in the ceramic slugs. In April 1962, one of the NMRC employees was found to be internally contaminated with cobalt-60 during routine internal personnel monitoring. Investigation disclosed that widespread contamination was present on the ground surrounding the building. The cause of the contamination was determined to be a failure of the source capsule seals. Building 150 and surrounding grounds were originally decommissioned in 1963. The sources were transferred by Atlantic Research Corporation, under AEC License No. 45–02808–02, to Oak Ridge National Laboratory. Building 150 internals, roof,

ventilation equipment, and 4 to 6 inches of soil adjacent to the building were removed by Navy personnel and disposed of as radioactive waste. In 2002, following the initial decommissioning of the NMRC, the Navy initiated additional decommissioning of Building 150 and the underground storage tanks (UST). Remediation activities included removal of the USTs, removal of contaminated soil adjacent to Building 150, scabbling of concrete surfaces within Building 150, and removal of rubble and drain lines within the Facility.

###### *Need for the Proposed Action*

The Navy is requesting approval of this permitting action because it has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility and the termination of the permit. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a timely decision on a proposed license amendment for decommissioning that ensures protection of the public health and safety.

###### *Environmental Impacts of the Proposed Action*

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days in unsealed form: cobalt-60. The Navy conducted a final status survey in January 2004. This survey covered the areas of use at the Facility. The Navy elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, "Consolidated NMSS Decommissioning Guidance," Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in subpart E of 10 CFR part 20 for unrestricted release. The Navy's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Navy's final status survey results are acceptable.

Based on its review the staff has determined that the affected environment and any environmental

impacts associated with the proposed action are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG-1496) Volumes 1-3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the Navy's materials permit is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

#### *Environmental Impacts of the Alternatives to the Proposed Action*

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Navy's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release and for permit termination. Additionally, denying the Navy's request to terminate its permit would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

#### *Conclusion*

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because

the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

#### *Agencies and Persons Consulted*

NRC provided a draft of this Environmental Assessment to the Radiological Health Program in the Air and Radiation Management Administration of the Maryland Department of the Environment for review on August 13, 2009. On September 14, the State of Maryland responded by email. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

#### **III. Finding of No Significant Impact**

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

#### **IV. Further Information**

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG-1757, "consolidated NMSS Decommissioning Guidance;"
2. Title 10, *Code of Federal Regulations*, Part 20, Subpart E, "Radiological Criteria for License Termination;"
3. Title 10, *Code of Federal Regulations*, Part 51, "Environmental Protection Regulations for Domestic

Licensing and Related Regulatory Functions;"

4. NUREG-1496, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities;"

5. NRC License No. 45-23645-01NA inspection and licensing records;

6. NMRC Historical Site Assessment (HAS) Volume I of II, dated June 15, 1999 (ML082280739);

7. NMRC Historical Site Assessment (HAS) Volume II of II, dated June 15, 1999 (ML082280809);

8. NMRC Radiological Decontamination and Decommissioning (D&D) Plan, Revision 1, dated August 17, 1999 (ML082280784 and ML082280814);

9. Radiological Decontamination and Decommissioning (D&D) Final Status Survey Report, dated April 2000 (ML082280117 and ML082280147);

10. Radiological Decontamination and Decommissioning (D&D) Final Status Survey Report, dated June 16, 2000 (ML082280738 and ML082280755);

11. Radiological Decontamination and Decommissioning (D&D) Final Status Survey Report, dated August 2000 (ML082280309, ML082280317, ML082280334, and ML082280287);

12. NRC letter dated February 29, 2000, "Decommissioning Plans for Naval Medical Research Center" (ML003687082);

13. Department of the Navy Letter dated July 6, 2005, "Decommissioning of the Former Naval Medical Research Center (NMRC), Bethesda, MD" (ML051940414);

14. Department of the Navy letter dated October 22, 2007, "Building 150 and Underground Storage Tank Decommissioning Project, National Naval Medical Center, Bethesda, MD" (ML073060430); and

15. Department of the Navy Letter dated July 11, 2008, "Naval Medical Research Center (NMRC), Bethesda Decommissioning Documentation" (ML082270292).

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region I, 475 Allendale PA, King of Prussia, PA this 10th day of November 2009.

For the Nuclear Regulatory Commission.

**James P. Dwyer,**

*Chief, Commercial & R&D Branch, Division of Nuclear Materials Safety, Region I.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60975; File No. SR-NYSEArca-2009-83]

### 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

November 10, 2009.

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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> Grail Advisors, LLC ("Manager"), a majority owned

subsidiary of Grail Partners, LLC, is the Fund's investment manager, and American Beacon Advisors, Inc. ("ABA") is the Fund's sub-adviser.<sup>6</sup> 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.<sup>7</sup>

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 companies<sup>8</sup> 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 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.<sup>9</sup>

#### 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 Act<sup>10</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>12</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 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 Portfolio<sup>13</sup> that will form 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. 60773 (October 2, 2009), 74 FR 52288 ("Notice").

<sup>4</sup> See NYSE Arca Equities Rule 8.600.

<sup>5</sup> 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 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").

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

<sup>7</sup> 17 CFR 240.10A-3.

<sup>8</sup> 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.

<sup>9</sup> See *supra* notes 3 and 5.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</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>12</sup> 17 U.S.C. 78f(b)(5).

<sup>13</sup> 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