

Applicants note that the Advisory Agreements and any Subadvisory Agreement with an Affiliated Subadviser will remain subject to sections 15(a) and 15(c) of the Act and rule 18f-2 under the Act, including the requirement for shareholder voting.

#### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as utilizing the Manager of Managers Structure. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Funds will inform shareholders of the hiring of a new Subadviser within 90 days after the hiring of the new Subadviser pursuant to the Modified Notice and Access Procedures.

4. The Adviser will not enter into a subadvisory agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Whenever a subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets and, subject to review and approval of the Board, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a part of each Fund's assets; (c) allocate and, when appropriate, reallocate each Fund's assets among one or more Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies and restrictions.

8. No trustee or officer of the Trust or a Fund, or director, manager, or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72314; File No. SR-NYSEArca-2014-64]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the ARK Innovation ETF, ARK Genomic Revolution ETF, ARK Industrial Innovation ETF, and ARK Web x.0 ETF Under NYSE Arca Equities Rule 8.600

June 4, 2014.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 28, 2014, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("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 list and trade shares of the following under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): ARK Innovation ETF, ARK Genomic Revolution ETF, ARK Industrial Innovation ETF, and ARK Web x.0 ETF. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, 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.

<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.

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

1. Purpose

The Exchange proposes to list and trade shares ("Shares") of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares<sup>4</sup>: ARK Innovation ETF, ARK Genomic Revolution ETF, ARK Industrial Innovation ETF, and ARK Web x.0 ETF (each, a "Fund" and, collectively, the "Funds"). The Shares will be offered by ARK ETF Trust ("Trust"), which is organized as a Delaware statutory trust and is registered with the Commission as an open-end management investment company.<sup>5</sup> ARK Investment Management LLC ("Adviser") will serve as the investment adviser to the Funds. Foreside Fund Services, LLC ("Distributor") will be the principal underwriter and distributor of the Funds' Shares. The Bank of New York Mellon will serve as administrator, custodian and transfer agent ("Administrator").<sup>6</sup>

<sup>4</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>5</sup> The Trust is registered under the 1940 Act. On March 31, 2014, the Trust filed with the Commission its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act"), and under the 1940 Act relating to the Funds (File Nos. 333-191019 and 811-22883) ("Registration Statement"). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 31009 (April 7, 2014) (File No. 812-14172) ("Exemptive Order").

<sup>6</sup> The Commission has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. See, e.g., Securities Exchange Act Release Nos. 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); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (order approving listing and trading of five fixed income funds of the PIMCO ETF Trust); 66343 (February 7, 2012), 77 FR 7647 (February 13, 2012) (SR-NYSEArca-2011-85) (order approving listing and trading of SPDR S&P 500 Real Assets ETF; SPDR S&P 500 Income Allocation ETF; SPDR S&P 500 Conservative Global Allocation

ETF; SPDR S&P 500 Global Allocation ETF; and SPDR S&P 500 Aggressive Global Allocation ETF).  
<sup>7</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

ETF; SPDR S&P 500 Global Allocation ETF; and SPDR S&P 500 Aggressive Global Allocation ETF).

<sup>7</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

material non-public information regarding such portfolio.

ARK Genomic Revolution ETF

According to the Registration Statement, the ARK Genomic Revolution ETF's investment objective will be long-term growth of capital.

According to the Registration Statement, the Fund will invest under normal circumstances<sup>8</sup> primarily (at least 80% of its assets) in domestic and foreign equity securities of companies that are relevant to the Fund's investment theme of genomics. Companies relevant to this theme are those that are focused on and are expected to benefit from extending and enhancing the quality of human and other life by incorporating technological and scientific developments, improvements and advancements in genetics into their business, such as by offering new products or services that rely on genetic sequencing, analysis, synthesis or instrumentation. These companies may include ones that develop, produce, manufacture or significantly rely on bionic devices, bio-inspired computing, bioinformatics, molecular medicine, and agricultural biology.

In selecting companies that the Adviser believes are relevant to a particular investment theme, it will seek to identify, using its own internal research and analysis, companies capitalizing on disruptive innovation or that are enabling the further development of a theme in the markets in which they operate. The Adviser's internal research and analysis will leverage insights from diverse sources, including external research, to develop and refine its investment themes and identify and take advantage of trends that have ramifications for individual companies or entire industries. The Adviser will use both "top down" (macro-economic and business cycle analysis) and "bottom up" (valuation, fundamental and quantitative measures) approaches to select investments for the Fund.

Under normal circumstances substantially all of the Fund's assets will be invested in equity securities, including common stocks, partnership interests, business trust shares and other

<sup>8</sup> The term "under normal circumstances" includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

equity investments or ownership interests in business enterprises.<sup>9</sup>

According to the Registration Statement, the Fund's investments will include issuers of micro-, small-, medium- and large-capitalizations. The Fund's investments in foreign equity securities will be in both developed and emerging markets.<sup>10</sup>

According to the Registration Statement, the Fund will be concentrated in issuers in any industry or group of industries in the health care sector. Issuers in the health care sector include manufacturers and distributors of health care equipment and supplies, owners and operators of health care facilities, health maintenance organizations and managed health care plans, health care providers and issuers that provide services to health care providers.

#### ARK Industrial Innovation ETF

According to the Registration Statement, the ARK Industrial Innovation ETF's investment objective will be long-term growth of capital.

According to the Registration Statement, the Fund will invest under normal circumstances<sup>11</sup> primarily (at least 80% of its assets) in domestic and foreign equity securities of companies that are relevant to the Fund's investment theme of industrial innovation. Companies relevant to this theme are those that are expected to focus on and benefit from the development of new products or services, technological improvements and advancements in scientific research related to, among other things, disruptive innovation in energy ("energy transformation companies"), automation and manufacturing ("automation transformation companies"), materials, and transportation.<sup>12</sup>

<sup>9</sup> According to the Adviser, at least 90% of each Fund's investments in equity securities (including Global Depository Receipts ("GDRs"), American Depository Receipts ("ADRs"), rights, warrants and preferred securities, discussed under "Other Investments," below) will be in securities that trade in markets that are members of the Intermarket Surveillance Group ("ISG") or are parties to a comprehensive surveillance sharing agreement with the Exchange.

<sup>10</sup> The Adviser generally considers emerging market countries to be developing market countries whose gross domestic product per person is classified below "high income" by the World Bank. Investments in emerging markets equity securities will not exceed 20% of a Fund's total assets.

<sup>11</sup> See note 8, *supra*.

<sup>12</sup> According to the Registration Statement, the Adviser will consider a company to be an energy transformation company if it seeks to capitalize on innovations or evolutions in: (i) Ways that energy is stored or used; (ii) the discovery, collection and/or implementation of new sources of energy, including unconventional sources of oil or natural

gas and/or (iii) the production or development of new materials for use in commercial applications of energy production, use or storage. The Adviser will consider a company to be an automation transformation company if it is focused on man capitalizing on the productivity of machines, such as through the automation of functions, processes or activities previously performed by human labor or the use of robotics to perform other functions, activities or processes.

According to the Registration Statement, in selecting companies that the Adviser believes are relevant to a particular investment theme, it will seek to identify, using its own internal research and analysis, companies capitalizing on disruptive innovation or that are enabling the further development of a theme in the markets in which they operate. The Adviser's internal research and analysis will leverage insights from diverse sources, including external research, to develop and refine its investment themes and identify and take advantage of trends that have ramifications for individual companies or entire industries. The Adviser will use both "top down" (macro-economic and business cycle analysis) and "bottom up" (valuation, fundamental and quantitative measures) approaches to select investments for the Fund.

Under normal circumstances, substantially all of the Fund's assets will be invested in equity securities, including common stocks, partnership interests, business trust shares and other equity investments or ownership interests in business enterprises.<sup>13</sup>

According to the Registration Statement, the Fund's investments will include issuers of micro-, small-, medium- and large-capitalizations. The Fund's investments in foreign equity securities will be in both developed and emerging markets.<sup>14</sup>

According to the Registration Statement, the Fund will be concentrated in issuers in any industry or group of industries in the industrials<sup>15</sup> and information technology sectors.<sup>16</sup>

#### ARK Innovation ETF

According to the Registration Statement, the ARK Innovation ETF's

investment objective will be long-term growth of capital.

According to the Registration Statement, the Fund will invest under normal circumstances<sup>17</sup> primarily (at least 65% of its assets) in domestic and foreign equity securities of companies that are relevant to the Fund's investment theme of disruptive innovation. Companies relevant to this theme are those that rely on or benefit from the development of new products or services, technological improvements and advancements in scientific research related to the areas of genomics ("genomic companies"), industrial innovation ("industrial innovation companies") or the increased use of shared technology, infrastructure, and services ("Web x.0 companies").

<sup>13</sup> See note 9, *supra*.

<sup>14</sup> See note 10, *supra*.

<sup>15</sup> According to the Registration Statement, the industrials sector includes companies engaged in the manufacture and distribution of capital goods, such as those used in defense, construction and engineering, companies that manufacture and distribute electrical equipment and industrial machinery and those that provide commercial and transportation services and supplies.

<sup>16</sup> According to the Registration Statement, the information technology sector includes software developers, providers of information technology consulting and services and manufacturers and distributors of computers, peripherals, communications equipment and semiconductors.

investment objective will be long-term growth of capital.

According to the Registration Statement, the Fund will invest under normal circumstances<sup>17</sup> primarily (at least 65% of its assets) in domestic and foreign equity securities of companies that are relevant to the Fund's investment theme of disruptive innovation. Companies relevant to this theme are those that rely on or benefit from the development of new products or services, technological improvements and advancements in scientific research related to the areas of genomics ("genomic companies"), industrial innovation ("industrial innovation companies") or the increased use of shared technology, infrastructure, and services ("Web x.0 companies").

According to the Registration Statement, in selecting companies that the Adviser believes are relevant to a particular investment theme, it will seek to identify, using its own internal research and analysis, companies capitalizing on disruptive innovation or that are enabling the further development of a theme in the markets in which they operate. The Adviser's internal research and analysis will leverage insights from diverse sources, including external research, to develop and refine its investment themes and identify and take advantage of trends that have ramifications for individual companies or entire industries. The types of companies that the Adviser believes are genomic companies, industrial innovation companies or Web x.0 companies are listed below:

- Genomics companies are companies that are focused on and are expected to benefit from extending and enhancing the quality of human and other life by incorporating technological and scientific developments in genetics into their business, such as by offering products or services that rely on genetic sequencing, analysis, synthesis or instrumentation. These companies may include ones that develop, produce, manufacture or significantly rely on bionic devices, bio-inspired computing, bioinformatics, molecular medicine, and agricultural biology.

- Industrial innovation companies are companies that are focused on and are expected to benefit from the development of new products or services, technological improvements and advancements in scientific research related to, among other things, disruptive innovation in energy ("energy transformation companies"), automation and manufacturing ("automation transformation

<sup>17</sup> See note 8, *supra*.

companies”), materials, and transportation.<sup>18</sup>

- Web x.0 companies are companies that are focused on and expected to benefit from shifting the bases of technology infrastructure from hardware and software to the cloud, enabling mobile and local services, such as companies that rely on or benefit from the increased use of shared technology, infrastructure and services. These companies may also include ones that develop, use or rely on innovative payment methodologies, big data, the internet of things, and social distribution and media.

The Adviser will select investments for the Fund that represent its highest-conviction investment ideas within the theme of disruptive innovation, as described above, in constructing the Fund’s portfolio. The Adviser’s process for identifying genomic companies, industrial innovation companies and Web x.0 companies will use both “top down” (macro-economic and business cycle analysis) and “bottom up” (valuation, fundamental and quantitative measures) approaches. The Adviser’s highest-conviction investment ideas are those that it believes present the best risk-reward opportunities.

Under normal circumstances, substantially all of the Fund’s assets will be invested in equity securities, including common stocks, partnership interests, business trust shares and other equity investments or ownership interests in business enterprises.<sup>19</sup>

According to the Registration Statement, the Fund’s investments will include issuers of micro-, small-, medium- and large-capitalizations. The Fund’s investments in foreign equity securities will be in both developed and emerging markets.<sup>20</sup>

According to the Registration Statement, the Fund will be concentrated in issuers in any industry or group of industries in the industrials<sup>21</sup> and information technology<sup>22</sup> sectors.

#### ARK Web x.0 ETF

According to the Registration Statement, the ARK Web x.0 ETF’s investment objective will be long-term growth of capital.

According to the Registration Statement, the Fund will invest under normal circumstances<sup>23</sup> primarily (at least 80% of its assets) in domestic and

foreign equity securities of companies that are relevant to the Fund’s investment theme of Web x.0. Companies relevant to this theme are focused on and expected to benefit from shifting the bases of technology infrastructure from hardware and software to the cloud, enabling mobile and local services, such as companies that rely on or benefit from the increased use of shared technology, infrastructure and services. These companies may also include ones that develop, use or rely on innovative payment methodologies, big data, the internet of things, and social distribution and media.

In selecting companies that the Adviser believes are relevant to a particular investment theme, it will seek to identify, using its own internal research and analysis, companies capitalizing on disruptive innovation or that are enabling the further development of a theme in the markets in which they operate. The Adviser’s internal research and analysis will leverage insights from diverse sources, including internal and external research, to develop and refine its investment themes and identify and take advantage of trends that have ramifications for individual companies or entire industries. The Adviser will use both “top down” (macro-economic and business cycle analysis) and “bottom up” (valuation, fundamental and quantitative measures) approaches to select investments for the Fund.

Under normal circumstances, substantially all of the Fund’s assets will be invested in equity securities, including common stocks, partnership interests, business trust shares and other equity investments or ownership interests in business enterprises.<sup>24</sup>

According to the Registration Statement, the Fund’s investments will include issuers of micro-, small-, medium- and large-capitalizations. The Fund’s investments in foreign equity securities will be in both developed and emerging markets.<sup>25</sup>

According to the Registration Statement, the Fund will be concentrated in issuers in any group of industries in the information technology sector.<sup>26</sup> The Fund’s investments may include issuers in the telecommunications services sector.<sup>27</sup>

#### Other Investments

While each Fund will invest, under normal circumstances, primarily in the equity securities described above, each Fund may invest in other investments, as described below. With the exception of the ARK Innovation ETF, under normal circumstances such other investments will not exceed 20% of a Fund’s assets. Regarding the ARK Innovation ETF, under normal circumstances such other investments will not exceed 35% of the Fund’s investments.

According to the Registration Statement, each Fund may invest no more than 35% of its assets in depositary receipts, rights, warrants, preferred securities and convertible securities.

ADRs and GDRs are securities typically issued by a bank or trust company that evidence ownership of underlying securities issued by a foreign corporation and entitle the holder to all dividends and capital gains that are paid out on the underlying foreign securities. Rights and warrants are option securities permitting their holders to subscribe for other securities. Preferred securities are contractual obligations that entail rights to distributions declared by the issuer’s board of directors but may permit the issuer to defer or suspend distributions for a certain period of time. ADRs may be traded over the counter (“OTC”).

According to the Registration Statement, each Fund may invest in the securities of open-end or closed-end investment companies, subject to applicable limitations under the 1940 Act. A Fund’s investment in other investment companies may include shares of exchange traded funds registered under the 1940 Act (“ETFs”),<sup>28</sup> closed-end investment companies (which include business development companies), unit investment trusts, and other open-end investment companies. In addition, the Funds may invest in other exchange-traded products (“ETPs”) such as commodity pools,<sup>29</sup> or other entities that are traded on an exchange.

<sup>28</sup> For purposes of this filing, ETFs, which will be listed on a national securities exchange, include the following: Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600).

<sup>29</sup> For purposes of this filing, ETPs include Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities

<sup>18</sup> See note 12, *supra*.

<sup>19</sup> See note 9, *supra*.

<sup>20</sup> See note 10, *supra*.

<sup>21</sup> See note 15, *supra*.

<sup>22</sup> See note 16, *supra*.

<sup>23</sup> See note 8, *supra*.

<sup>24</sup> See note 9, *supra*.

<sup>25</sup> See note 10, *supra*.

<sup>26</sup> See note 16, *supra*.

<sup>27</sup> According to the Registration Statement, the telecommunications services sector includes companies that provide fixed-line or wireless telecommunication and data transmission services.

In addition, according to the Registration Statement, each Fund may use derivative instruments. Specifically, the Funds may use options, futures, swaps and forwards, for hedging or risk management purposes or as part of its investment practices. Derivative instruments are contracts whose value depends on, or is derived from, the value of an underlying asset, reference rate or index. These underlying assets, reference rates or indices may be any one of the following: stocks, interest rates, currency exchange rates and stock indices.

The options in which the Funds may invest may be exchanged-traded or OTC. The exchange-traded options in which the Funds may invest will trade on markets that are members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange. The futures in which the Funds may invest will be exchange-traded. Each Fund will not invest more than 10% of its assets in futures that trade in markets that are not members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange. The swaps in which the Funds will invest may be cleared swaps or non-cleared. The Funds will collateralize their obligations with liquid assets consistent with the 1940 Act and interpretations thereunder.

The Funds will only enter into transactions in derivative instruments with counterparties that the Adviser reasonably believes are capable of performing under the contract and will post as collateral as required by the counterparty. The Funds will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will evaluate the creditworthiness of counterparties on a regular basis. In addition to information provided by credit agencies, the Adviser will review approved counterparties using various factors, which may include the counterparty's reputation, the Adviser's past experience with the counterparty and the price/market actions of debt of the counterparty.

According to the Registration Statement, the Funds may invest in currency forwards. A currency forward transaction is a contract to buy or sell a specified quantity of currency at a specified date in the future at a specified price which may be any fixed number of days from the date of the contract agreed upon by the parties, at

a price set at the time of the contract. Currency forward contracts may be used to increase or reduce exposure to currency price movements.

According to the Registration Statement, the Funds may enter into futures contracts and options, including options on futures contracts. Futures contracts generally provide for the future sale by one party and purchase by another party of a specified instrument, index or commodity at a specified future time and at a specified price. Futures contracts are standardized as to maturity date and underlying instrument and are traded on futures exchanges. An option is a contract that provides the holder the right to buy or sell shares or futures at a fixed price, within a specified period of time.

According to the Registration Statement, the Funds may invest in participation notes ("P-Notes"). P-Notes are issued by banks or broker-dealers and are designed to offer a return linked to the performance of a particular underlying equity security or market. P-Notes can have the characteristics or take the form of various instruments, including, but not limited to, certificates or warrants.

According to the Registration Statement, each Fund may invest in repurchase agreements with commercial banks, brokers or dealers and to invest securities lending cash collateral. A repurchase agreement is an agreement under which a Fund acquires a money market instrument from a seller, subject to resale to the seller at an agreed upon price and date.

According to the Registration Statement, the Funds may invest in structured notes. A structured note is a derivative security for which the amount of principal repayment and/or interest payments is based on the movement of one or more "factors." These factors include, but are not limited to, currency exchange rates, interest rates (such as the prime lending rate or LIBOR), referenced bonds and stock indices.

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser consistent with Commission guidance.<sup>30</sup> Each Fund will monitor its

<sup>30</sup> In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the asset; the number of dealers wishing to purchase or sell the asset and the number of other potential purchasers; dealer undertakings to make a market in the asset; and the nature of the asset and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the asset, the method of soliciting offers, and the mechanics of transfer).

portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of each Fund's net assets are held in illiquid assets. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.<sup>31</sup>

Each Fund will be classified as a "non-diversified" investment company under the 1940 Act<sup>32</sup> and therefore may concentrate its investments in any particular industry or group of industries, such that: (i) ARK Genomic Revolution ETF will concentrate in securities of issuers having their principal business activities in any industry or group of industries in the health care sector; (ii) ARK Innovation ETF will concentrate in securities of issuers having their principal business activities in any industry or group of industries in the health care sector, the industrials sector, the information technology sector, or the telecommunications services sector; (iii) ARK Industrial Innovation ETF will concentrate in securities of issuers having their principal business activities in any industry or group of industries in the industrials sector or the information technology sector; and (iv) ARK Web x.0 ETF will concentrate in securities of issuers having their principal business activities in any industry or group of industries in the information technology sector or the

<sup>31</sup> See Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A) (stating that Guide 4 "permit[s] a fund to invest up to 15% of its assets in illiquid securities"). The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

<sup>32</sup> The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

Rule 8.203); and Trust Units (as described in NYSE Arca Equities Rule 8.500).

telecommunications services sector.<sup>33</sup> Each Fund will consider an issuer to have its “principal business activities” in an industry or group of industries if the issuer derives more than 50% of its revenues from a business considered to be a part of such industry or group of industries according to a third party’s industry classification system or that of the Adviser.

The Funds intend to qualify for and to elect treatment as a separate regulated investment company (“RIC”) under Subchapter M of the Internal Revenue Code.<sup>34</sup>

According to the Registration Statement, each Fund may take a temporary defensive position (investments in cash or cash equivalents) in response to adverse market, economic, political or other conditions.<sup>35</sup> Cash equivalents include short-term high quality debt securities and money market instruments such as commercial paper, certificates of deposit, bankers’ acceptances, U.S. Government securities, repurchase agreements and bonds that are rated BBB or higher and shares of short-term fixed income or money market funds.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Funds will be in compliance with Rule 10A-3<sup>36</sup> under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (“NAV”) per Share for each Fund will be calculated daily and that the NAV and the Disclosed Portfolio for each Fund will be made available to all market participants at the same time. Each Fund’s investments will be consistent with its respective investment objective in accordance with the 1940 Act and will not be used to

enhance leverage. Each Fund’s investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.*, 2Xs or 3Xs) of the Fund’s broad-based securities market index (as defined in Form N-1A).<sup>37</sup>

#### Net Asset Value

According to the Registration Statement, the NAV per Share for the Fund will be computed by dividing the value of the net assets of the Fund (the value of its total assets less total liabilities) by the total number of Shares outstanding. Expenses and fees will be accrued daily and taken into account for purposes of determining NAV. The NAV of each Fund will be determined each business day as of the close of trading (ordinarily 4:00 p.m., Eastern time (“E.T.”) on the New York Stock Exchange (“NYSE”). Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

According to the Registration Statement, the values of each Fund’s portfolio securities holdings will be based on market prices.

Price information for exchange-traded equity securities, including equity securities of domestic and foreign companies, such as common stock, partnership interests, business trust shares, ETFs and ETPs as well as depositary receipts (excluding ADRs traded OTC), rights, warrants and preferred securities, will be taken from the exchange where the security or asset is primarily traded.

ADRs traded OTC will be valued on the basis of the market closing price on the exchange where the stock of the foreign issuer that underlies the ADR is listed.

Investment company securities (other than ETFs), including closed end investment companies, unit investment trusts and other open-end investment companies, will be valued at NAV, utilizing pricing services.

Non-exchange-traded derivatives, including forwards, swaps and certain options, will normally be valued on the basis of quotes obtained from brokers and dealers or independent pricing services using data reflecting the earlier closing of the principal markets for those assets. Prices obtained from independent pricing services use information provided by market makers

or estimates of market values obtained from yield data relating to investments or securities with similar characteristics.

Exchange-traded options (excluding options on futures) will be valued at market closing price. Futures and options on futures will be valued at the settlement price determined by the applicable exchange.

Fixed income securities generally trade in the OTC market rather than on a securities exchange. A Fund will generally value these portfolio securities, including P-Notes, structured notes, debt securities, money market instruments such as commercial paper, certificates of deposit, bankers’ acceptances, U.S. Government securities, repurchase agreements, bonds and convertible securities, and shares of short-term fixed income or money market funds by relying on independent pricing services. A Fund’s pricing services will use valuation models or matrix pricing to determine current value. In general, pricing services use information with respect to comparable bond and note transactions, quotations from bond dealers or by reference to other securities that are considered comparable in such characteristics as rating, interest rate, maturity date, option adjusted spread models, prepayment projections, interest rate spreads and yield curves. Matrix price is an estimated price or value for a fixed-income security. Matrix pricing is considered a form of fair value pricing.

Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

In the absence of a last reported sales price for an exchange-traded security or asset, if no sales were reported, if a market quotation for a security or asset is not readily available or the Adviser believes it does not otherwise accurately reflect the market value of the security or asset at the time a Fund calculates its NAV, the security or asset will be valued based on fair value as determined in good faith by the Adviser in accordance with the Trust’s valuation policies and procedures approved by the Board of Trustees and in accordance with the 1940 Act. A Fund may also use fair value pricing in a variety of circumstances, including but not limited to, trading in a security or asset has been suspended or halted. Fair value pricing involves subjective judgments and it is possible that a fair value determination for a security or asset may be materially different than

<sup>33</sup> See Form N-1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, e.g., Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

<sup>34</sup> 26 U.S.C. 851 *et seq.*

<sup>35</sup> According to the Adviser, circumstances under which a Fund may temporarily depart from its normal investment process include, but are not limited to, extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

<sup>36</sup> 17 CFR 240.10A-3.

<sup>37</sup> Each Fund’s broad-based securities market index will be identified in a future amendment to the Registration Statement following each Fund’s first full calendar year of performance.

the value that could be realized upon the sale of the security or asset.

Values may be based on quotes obtained from a quotation reporting system, established market makers or by an outside independent pricing service. Prices obtained by an outside independent pricing service will use information provided by market makers or estimates of market values obtained from data related to investments or securities with similar characteristics and may use a computerized grid matrix of securities and its evaluations in determining what it believes is the fair value of the portfolio securities.

#### Creation and Redemption of Shares

According to the Registration Statement, each Fund will issue, sell and redeem Shares only in aggregations of a specified number of Shares (each, a "Creation Unit") on a continuous basis at its NAV next determined after receipt, on any business day, of an order in proper form. A Creation Unit will initially consist of 50,000 Shares.

According to the Registration Statement, the consideration for a purchase of Creation Units will generally consist of an in-kind deposit of specified securities that would be consistent with the relevant Fund's investment objective and portfolio ("Deposit Instruments") and an amount of cash ("Cash Amount") or, as permitted or required by the Fund, of cash. The Cash Amount together with the Deposit Instruments, as applicable, are referred to as the "Creation Deposit," which represents the minimum initial and subsequent investment amount for Creation Units. The Cash Amount represents the difference between the NAV of a Creation Unit and the market value of Deposit Instruments.

According to the Registration Statement, the Trust reserves the right to accept a basket of securities or cash that differs from Deposit Instruments or to permit or require the substitution of an amount of cash (*i.e.*, a "cash in lieu" amount) to be added to the Cash Amount to replace any Deposit Instrument which may, among other reasons, not be available in sufficient quantity for delivery, not be permitted to be re-registered in the name of the Trust as a result of an in-kind creation order pursuant to local law or market convention or which may not be eligible for transfer through the clearing process, or which may not be eligible for trading by a participating party.

According to the Registration Statement, all orders to create Creation Units must be received by the Distributor no later than the closing

time of the regular trading session on the Exchange (ordinarily 4:00 p.m. E.T.) on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of the relevant Fund as determined on such date.

According to the Registration Statement, Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor, only on a business day and only through an authorized participant.

According to the Registration Statement, unless cash redemptions are permitted or required for a Fund, the redemption proceeds for a Creation Unit will generally consist of in-kind securities and instruments ("Redemption Instruments") as announced by the Administrator on the business day of the request for redemption, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Redemption Instruments, less the applicable fees. Should the Redemption Instruments have a value greater than the NAV of the Shares being redeemed, a compensating cash payment to the Trust equal to the differential plus the applicable redemption transaction fee will be required to be arranged for by or on behalf of the redeeming shareholder. Each Fund reserves the right to honor a redemption request by delivering a basket of securities or cash that differs from the Redemption Instruments.

According to the Registration Statement, an order to redeem Creation Units of a Fund will be deemed received on the transmittal date if such order is received by the Distributor not later than 4:00 p.m. E.T. on such transmittal date and all other procedures are properly followed; such order will be effected based on the NAV of a Fund as next determined.

According to the Registration Statement, the Administrator, through the NSCC, will make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m. Eastern time), (a) the list of the names and the required number of each Deposit Instrument to be included in the current Creation Deposit (based on information at the end of the previous business day) as well as the Cash Amount for each Fund and (b) the Redemption Instruments that will be applicable to redemption requests received in proper form on that day. In addition, the Administrator, through the NSCC, also makes available on a continuous basis throughout the

day, the indicative optimized portfolio value ("IOPV").

#### Availability of Information

The Funds' Web site ([www.ARK-Funds.com](http://www.ARK-Funds.com)) will include a form of the prospectus for the Funds that may be downloaded. The Funds' Web site will include additional quantitative information updated on a daily basis, including, for each Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>38</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Adviser will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for each Fund's calculation of NAV at the end of the business day.<sup>39</sup>

On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Funds the following information on the Funds' Web site: Ticker symbol (if applicable), name of security and/or financial instrument, number of shares, if applicable, and dollar value of financial instruments and securities held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for a Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via NSCC. The basket will represent one Creation Unit of the relevant Fund.

Investors will also be able to obtain the Trust's Statement of Additional

<sup>38</sup> The Bid/Ask Price of each Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the relevant Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

<sup>39</sup> Under accounting procedures followed by the Funds, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

Information (“SAI”), the Funds’ Shareholder Reports, and the Trust’s Form N–CSR and Form N–SAR, filed twice a year. The Trust’s SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission’s Web site at [www.sec.gov](http://www.sec.gov). Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and underlying securities that are exchange listed, including equities (including common stock, partnership interests and business trust shares, as well as depositary receipts (excluding ADRs traded OTC and GDRs), rights, warrants, preferred securities, ETFs and ETPs (collectively, “Exchange Traded Equities”)), will be available via the Consolidated Tape Association (“CTA”) high-speed line and from the securities exchange on which they are listed. Quotation and last sale information for GDRs will be available from the securities exchange on which they are listed. Information relating to futures and options on futures also will be available from the exchange on which such instruments are traded. Information relating to exchange-traded options will be available via the Options Price Reporting Authority. Quotation information from brokers and dealers or pricing services will be available for ADRs traded OTC, investment company securities (other than ETFs), including closed end investment companies, unit investment trusts and open-end investment companies, non-exchange-traded derivatives, including forwards, swaps and certain options, and fixed income securities, including P-Notes, structured notes, debt securities, money market instruments such as commercial paper, certificates of deposit, bankers’ acceptances, U.S. Government securities, repurchase agreements, bonds and convertible securities, and shares of short-term fixed income or money market funds. Pricing information regarding each asset class in which the Funds will invest is generally available through nationally recognized data services providers through subscription agreements.

Every fifteen seconds during NYSE Arca Core Trading Session, an IOPV

relating to each Fund will be widely disseminated by one or more major market data vendors.<sup>40</sup> The IOPV is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600(c)(3).<sup>41</sup> The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of each Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Funds that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds.<sup>42</sup> Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may 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 and/or the financial instruments comprising the Disclosed Portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of

<sup>40</sup> The IOPV calculations are estimates of the value of the Funds’ NAV per Share using market data converted into U.S. dollars at the current currency rates. The IOPV price is based on quotes and closing prices from the securities’ local market and may not reflect events that occur subsequent to the local market’s close. Premiums and discounts between the IOPV and the market price may occur. This should not be viewed as a “real-time” update of the NAV per Share of the Funds, which is calculated only once a day.

<sup>41</sup> Currently, it is the Exchange’s understanding that several major market data vendors display and/or make widely available IOPVs taken from the CTA or other data feeds.

<sup>42</sup> See NYSE Arca Equities Rule 7.12.

equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (“MPV”) for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>43</sup> The Exchange represents that these 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 federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. 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.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying Exchange Traded Equities, exchange traded options and futures with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying Exchange Traded Equities, exchange traded options and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying Exchange Traded Equities, exchange traded options and futures from markets and other entities that are

<sup>43</sup> FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.



members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>44</sup> At least 90% of each Fund's investments in equity securities (including GDRs and ADRs) will be in securities that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. The exchange-traded options in which the Funds may invest will trade on markets that are members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange. Each Fund will not invest more than 10% of its assets in futures that trade in markets that are not members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that

the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day.

#### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>45</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying Exchange Traded Equities, exchange traded options and futures with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying Exchange Traded Equities, exchange traded options and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and Exchange Traded Equities, exchange traded options and futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. At least 90% of each Fund's investments in equity securities (including GDRs and ADRs) will be in securities that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. The exchange-traded options in which the Funds may invest will trade on markets that are members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange. Each Fund will not invest more than 10% of its assets in futures that trade in markets that are not members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange.

The Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer. In the event (a) the Adviser or any sub-adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new adviser or sub-adviser is, or becomes affiliated with, a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser consistent with Commission guidance. Each Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in 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, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, the IOPV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Adviser will disclose on its Web site the Disclosed Portfolio that will form the basis for the Funds' calculation of NAV at the end of the business day.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Quotation and last sale information for the Shares and underlying securities that are exchange listed, including Exchange Traded Equities, will be available via the CTA high-speed line and from the securities exchange on which they are listed. Quotation and last sale information for GDRs will be available from the securities exchange on which they are listed. Information relating to futures

<sup>44</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio for each Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>45</sup> 15 U.S.C. 78f(b)(5).

and options on futures also will be available from the exchange on which such instruments are traded. Information relating to exchange-traded options will be available via the Options Price Reporting Authority. Quotation information from brokers and dealers or pricing services will be available for ADRs traded OTC, investment company securities (other than ETFs), including closed end investment companies, unit investment trusts and open-end investment companies, non-exchange-traded derivatives, including forwards, swaps and certain options, and fixed income securities, including P-Notes, structured notes, debt securities, money market instruments such as commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements, bonds and convertible securities, and shares of short-term fixed income or money market funds. Pricing information regarding each asset class in which the Funds will invest is generally available through nationally recognized data services providers through subscription agreements. The Web site for the Funds will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the IOPV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are

members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the IOPV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

#### *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 purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional types of actively-managed exchange-traded products that hold equity securities and will enhance competition among market participants, to the benefit of investors and the marketplace.

#### *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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2014-64 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2014-64. This file number should be included on the subject line if email 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 20549-1090 on official business days between the hours of 10:00 a.m. and 3:00 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 available publicly. All submissions should refer to File Number SR-NYSEArca-2014-64 and should be submitted on or before July 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>46</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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<sup>46</sup> 17 CFR 200.30-3(a)(12).