

• Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–NYSEArca–2014–63 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–2014–63. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2014–63 and should be submitted on or before August 14, 2014. Rebuttal comments should be submitted by August 28, 2014.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(3)(C) of the Act,<sup>25</sup> that File Number SR–NYSEArca–2014–63, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

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

[FR Doc. 2014–17399 Filed 7–23–14; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72641; File No. SR–NYSEArca–2014–64]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval 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

July 18, 2014.

#### I. Introduction

On May 28, 2014, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) 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 following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange: ARK Innovation ETF, ARK Genomic Revolution ETF, ARK Industrial Innovation ETF, and ARK Web x.0 ETF (individually, “Fund” and, collectively, “Funds”). The proposed rule change was published for comment in the **Federal Register** on June 10, 2014.<sup>3</sup> The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

#### II. Description of Proposed Rule Change

The Exchange has made the following representations and statements in describing each Fund and its respective investment strategies, including other portfolio holdings and investment restrictions.<sup>4</sup>

##### General

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.<sup>6</sup> Foreside Fund Services, LLC 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.

##### ARK Genomic Revolution ETF

The ARK Genomic Revolution ETF’s investment objective will be long-term growth of capital.

The Fund will invest, under normal circumstances,<sup>7</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

<sup>5</sup> The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). The Exchange states that on March 31, 2014, the Trust filed with the Commission its registration statement on Form N–1A under the Securities Act of 1933 (“Securities Act”) and under the 1940 Act relating to the Funds (File Nos. 333–191019 and 811–22883) (“Registration Statement”). In addition, according to the Exchange, the Trust has obtained certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 31009 (April 7, 2014) (File No. 812–14172).

<sup>6</sup> The Exchange states that the Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer. The Exchange states that 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.

<sup>7</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.

<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. 72314 (Jun. 4, 2014), 79 FR 33229 (“Notice”).

<sup>4</sup> The Commission notes that additional information regarding the Trust, the Funds, and the Shares, including investment strategies, risks, net asset value (“NAV”) calculation, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other information, is included in the Notice and the Registration Statement, as applicable. See Notice and Registration Statement, *supra* note 3 and *infra* note 5, respectively.

<sup>25</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>26</sup> 17 CFR 200.30–3(a)(57) and (58).

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>8</sup>

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>9</sup>

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*

The ARK Industrial Innovation ETF's investment objective will be long-term growth of capital.

The Fund will invest, under normal circumstances,<sup>10</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>11</sup>

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>12</sup>

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>13</sup>

The Fund will be concentrated in issuers in any industry or group of

industries in the industrials<sup>14</sup> and information technology sectors.<sup>15</sup>

#### *ARK Innovation ETF*

The ARK Innovation ETF's investment objective will be long-term growth of capital.

The Fund will invest, under normal circumstances,<sup>16</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 relating 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").

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,

<sup>14</sup> 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>15</sup> 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.

<sup>16</sup> See *supra* note 7.

<sup>8</sup> At least 90% of each Fund's investments in equity securities (including Global Depositary Receipts ("GDRs"), American Depositary 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>9</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>10</sup> See *supra* note 7.

<sup>11</sup> 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.

<sup>12</sup> See *supra* note 8.

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

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 companies), materials, and transportation.<sup>17</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>18</sup>

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>19</sup>

The Fund will be concentrated in issuers in any industry or group of industries in the industrials<sup>20</sup> and information technology<sup>21</sup> sectors.

#### ARK Web x.0 ETF

The ARK Web x.0 ETF's investment objective will be long-term growth of capital.

The Fund will invest, under normal circumstances,<sup>22</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>23</sup>

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>24</sup>

The Fund will be concentrated in issuers in any group of industries in the information technology sector.<sup>25</sup> The Fund's investments may include issuers

in the telecommunications services sector.<sup>26</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.

Each Fund may invest no more than 35% of its assets in depositary receipts (*i.e.*, ADRs and GDRs), 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").<sup>27</sup>

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>26</sup> The telecommunications services sector includes companies that provide fixed-line or wireless telecommunication and data transmission services.

<sup>27</sup> See *supra* note 8.

<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

<sup>17</sup> See *supra* note 11.

<sup>18</sup> See *supra* note 8.

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

<sup>20</sup> See *supra* note 14.

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

<sup>22</sup> See *supra* note 7.

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

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

<sup>25</sup> See *supra* note 15.

In addition, 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.

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.

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.

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.

Each Fund may invest in repurchase agreements with commercial banks, brokers, or dealers and 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.

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 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.

Each Fund will be classified as a "non-diversified" investment company under the 1940 Act 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 telecommunications services sector. 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 under Subchapter M of the Internal Revenue Code.

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>31</sup> Cash equivalents

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

<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).

<sup>31</sup> 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.

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.

### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>32</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>33</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>34</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the initial and continued listing criteria in NYSE Arca Equities Rule 8.600 for the Shares to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>35</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, an indicative optimized portfolio value ("IOPV"),<sup>36</sup> which is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule

8.600(c)(3), relating to each Fund will be widely disseminated every fifteen seconds during the NYSE Arca Core Trading Session by one or more major market data vendors.<sup>37</sup> 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 identities and quantities of the portfolio of securities and other assets ("Disclosed Portfolio") held by the Funds that will form the basis for each Fund's calculation of NAV at the end of the business day.<sup>38</sup> 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 New York Stock Exchange ("NYSE") via the National Securities Clearing Corporation. The NAV of each Fund will be determined each business day as of the close of trading (ordinarily 4:00 p.m., Eastern Time on the NYSE).<sup>39</sup>

<sup>37</sup> According to the Exchange, several major market data vendors display and/or make widely available IOPVs published on CTA or other data feeds.

<sup>38</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.

<sup>39</sup> The NAV per Share for each 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. According to the Exchange, 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 depository 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

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 underlying securities that are exchange-listed, including equities (including common stock, partnership interests, and business trust shares, as well as depository receipts (excluding ADRs traded OTC and GDRs), rights, warrants, preferred securities, ETFs, and ETPs (collectively, "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 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

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 and is considered a form of fair value pricing.

<sup>32</sup> 15 U.S.C. 78f.

<sup>33</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>34</sup> 15 U.S.C. 78f(b)(5).

<sup>35</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>36</sup> According to the Exchange, 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.

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 Funds' Web site will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information for each Fund.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the 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. 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,<sup>40</sup> and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which trading in the Shares of a Fund may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Reporting Authority must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of a Fund's portfolio. In addition, the Exchange states that the Adviser is not registered as, nor affiliated with, a broker-dealer.<sup>41</sup> 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>42</sup> The Exchange further 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. Moreover, prior to the commencement of trading, the Exchange states that it will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including the following:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) 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

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.

<sup>42</sup> The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

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 members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(4) 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.

(5) 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. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) 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; (c) 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; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) 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 (f) trading information.

(6) For initial and continued listing, the Funds will be in compliance with Rule 10A-3 under the Act,<sup>43</sup> as provided by NYSE Arca Equities Rule 5.3.

(7) 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

<sup>40</sup> These reasons 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. 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>41</sup> See *supra* note 6. The Exchange states that 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

<sup>43</sup> 17 CFR 240.10A-3.

Adviser consistent with Commission guidance.

(8) Under normal market circumstances, ARK Genomic Revolution ETF, ARK Industrial Innovation ETF, and ARK Web x.0 ETF will each invest at least 80% of its assets in equity securities. Under normal market circumstances, ARK Innovation ETF will invest at least 65% of its assets in equity securities.

(9) Investments in emerging markets equity securities will not exceed 20% of a Fund's total assets.

(10) 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).

(11) 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.

(12) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Funds.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>44</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>45</sup> that the

proposed rule change (SR-NYSEArca-2014-64) be, and it hereby is, approved.

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

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

[FR Doc. 2014-17398 Filed 7-23-14; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 72645; File No. SR-NYSEArca-2014-44]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating To Listing and Trading Shares of First Trust Long/Short Equity ETF Under NYSE Arca Equities Rule 8.600

July 18, 2014.

#### I. Introduction

On May 21, 2014, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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 First Trust Long/Short Equity ETF ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on June 9, 2014.<sup>3</sup> The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

#### II. Description of Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares<sup>4</sup> on the Exchange. The Fund will be a series of First Trust Exchange-

Traded Fund III ("Trust"),<sup>5</sup> a registered management investment company. The Fund will be an actively-managed exchange-traded fund ("ETF") and will not seek to replicate the performance of a specified index. First Trust Advisors L.P. ("Adviser") will be the investment adviser for the Fund.<sup>6</sup> Brown Brothers Harriman & Co. will be the administrator, accounting agent, custodian, and transfer agent for the Fund, and First Trust Portfolios L.P. will be the principal underwriter and distributor for the Fund.

The Exchange has made the following representations and statements in describing the Fund and its investment strategies, including other portfolio holdings and investment restrictions.<sup>7</sup>

#### *Principal Investments of the Fund*

According to the Exchange, the Fund will seek to provide investors with long-term total return. The Fund intends to pursue its investment objective by establishing long and short positions in a portfolio of Equity Securities (as defined below). Under normal market conditions,<sup>8</sup> at least 80% of the Fund's

<sup>5</sup> The Trust is registered under the 1940 Act. According to the Exchange, on April 1, 2014, the Trust filed with the Commission an amendment to its registration statement on Form N-1A relating to the Fund (File Nos. 333-176976 and 811-22245) ("Registration Statement"). In addition, the Exchange states that the Trust has obtained certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 28468 (Oct. 27, 2008) (File No. 812-13477).

<sup>6</sup> The Exchange represents that the Adviser is not registered as a broker-dealer, but is affiliated with First Trust Portfolios L.P., a broker dealer. The Exchange further represents that the Adviser has implemented a "fire wall" with respect to its broker-dealer affiliate regarding access to information concerning the composition and changes to the Fund's portfolio. In addition, according to the Exchange, 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, the Adviser or any new adviser or sub-adviser, as applicable, will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and changes to the Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

<sup>7</sup> The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, net asset value ("NAV") calculation, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other information, is included in the Notice and the Registration Statement, as applicable. See Notice and Registration Statement, *supra* notes 3 and 5, respectively.

<sup>8</sup> The term "under normal market conditions" or "under normal circumstances" includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the equities markets or the financial markets generally; operational issues causing dissemination of

<sup>44</sup> 15 U.S.C. 78f(b)(5).

<sup>45</sup> 15 U.S.C. 78s(b)(2).

<sup>46</sup> 15 U.S.C. 78s(b)(2).

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 72299 (Jun. 3, 2014), 79 FR 33018 ("Notice").

<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 ("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