



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

July 31, 2014

Via Facsimile and U.S. Mail

Jane A. Kanter, Esq.  
Dechert LLP  
1900 K Street, NW  
Washington, DC 20006

**Re: ARK ETF Trust and Tender Offer for Shares of Funds**

Dear Ms. Kanter:

We are responding to your letter requesting exemptive and no-action relief dated July 31, 2014 and addressed to Michele M. Anderson and David L. Orlic as supplemented by telephone conversations with the staff. To avoid having to recite or summarize the facts set forth in your letter, our response is attached to the enclosed photocopy of your correspondence. Unless otherwise noted, capitalized terms in this letter have the same meaning as in your July 31, 2014 correspondence.

On the basis of the representations made and the facts presented in your July 31, 2014 letter, the United States Securities and Exchange Commission ("Commission") hereby grants an exemption from Rule 14e-5 under the Securities Exchange Act of 1934. The exemption from Rule 14e-5 permits any person acting as a dealer-manager of a tender offer for a security contained in a Creation Basket or a Redemption Basket to redeem Shares of a Fund in Creation Units to the Trust for a Redemption Basket that may include a security subject to the tender offer and purchase Shares of a Fund in the secondary market during such tender offer.

In addition, on the basis of the representations made and the facts presented in your July 31, 2014 letter, the staff of the Division of Corporation Finance will not recommend that the Commission take enforcement action under Rule 14e-5 if a broker-dealer acting as a dealer-manager of a tender offer for a Portfolio Security held by a Fund purchases or arranges to purchase shares of such Portfolio Security in the secondary market for the purpose of tendering them to purchase one or more Creation Units of Shares of a Fund, as described in your letter.

In granting this relief, we note in particular that:

- any bids, purchases or redemptions by dealer-managers would not be effected for the purpose of facilitating a tender offer;

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- any purchases of a Portfolio Security by a dealer-manager during a tender offer will be effected as adjustments to a basket of securities in the ordinary course of business as a result of the composition of a Fund's portfolio; and
- except for the relief specifically granted herein, any person acting as a dealer-manager of a tender offer will comply with Rule 14e-5.

The foregoing exemptive and no-action relief is based solely on the representations and the facts presented in your letter, as supplemented by telephone conversations with the Commission staff. The relief granted is strictly limited to the application of the rule listed above to the transactions described in your letter. You should discontinue these transactions pending further consultations with the staff if any of the facts or representations set forth in your letter change. In addition, this position is subject to modification or revocation if at any time the Commission or the Division of Corporation Finance determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.

We also direct your attention to the anti-fraud and anti-manipulation provisions of the federal securities laws, including Sections 10(b) and 14(e) of the Exchange Act, and Rule 10b-5 thereunder. The participants in the transactions contemplated by your letter must comply with these and any other applicable provisions of the federal securities laws. The Division of Corporation Finance expresses no view on any other questions that may be raised by these transactions, including but not limited to, the adequacy of disclosure concerning and the applicability of any other federal or state laws to such transactions.

Sincerely,

For the Commission,  
By the Division of Corporation Finance  
pursuant to delegated authority,

Michele M. Anderson  
Chief  
Office of Mergers and Acquisitions  
Division of Corporation Finance

**JANE A. KANTER**  
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July 31, 2014

Michele M. Anderson, Chief  
David L. Orlic, Esq.  
Office of Mergers and Acquisitions  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Request of ARK ETF Trust for Exemptive and No-Action Relief from Rule 14e-5  
under the Securities Exchange Act of 1934

Dear Ms. Anderson and Mr. Orlic:

ARK ETF Trust (“Trust”) is an open-end management investment company organized on June 7, 2013 as a Delaware statutory trust. The Trust is currently comprised of ARK Innovation ETF, ARK Industrial Innovation ETF, ARK Genomic Revolution ETF, and ARK Web x.0 ETF (each, a “Fund” and collectively, “Funds”), each a newly-created series of the Trust. The name and investment objective of each Fund are described below.

The Trust, on behalf of itself, the Funds and any national securities exchange or national securities association on or through which a Fund’s shares (“Shares”) may subsequently trade and persons or entities engaging in transactions in Shares, as applicable, requests that the Securities and Exchange Commission (“Commission” or “SEC”) grant exemptive and no-action relief from Rule 14e-5 under the Securities Exchange Act of 1934 (“Exchange Act”) in connection with secondary market transactions in Shares and the creation and redemption of Creation Units, as discussed below.

The Trust expects to issue and redeem Shares of the Funds in aggregations of at least 50,000 Shares, referred to as Creation Units. The Trust has an effective registration statement on Form N-1A. Shares of the Funds will be listed on the NYSE Arca and may, in the future, also be listed on another exchange (“Exchange”) as defined in Section 2(a)(26) of the Investment Company Act of 1940, as amended (“1940 Act”).

Each Fund is an actively-managed ETF. ARK Innovation ETF will invest under normal circumstances 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 are expected to 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"). ARK Industrial Innovation ETF will invest under normal circumstances 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. ARK Genomic Revolution ETF will invest under normal circumstances 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 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. ARK Web x.0 ETF will invest under normal circumstances 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.

I. Availability of Information

On each day that the Exchange is open for business ("Business Day"), before commencement of trading in Shares on the Exchange, the Funds will disclose on their website the identities and quantities of the securities and other assets (collectively, "Portfolio Securities") held by the Funds that will form the basis for their calculation of net asset value ("NAV") per share at the end of the Business Day. The website and information will be publicly available at no charge. The Exchange or other market information provider will disseminate every 15 seconds throughout the regular trading hours, through the facilities of the Consolidated Tape Association, an amount ("IIV") representing, on a per Share basis, the

current value of the Portfolio Securities that were publicly disclosed prior to the commencement of trading in Shares on the Exchange.

## II. Arbitrage Process

The Shares will be listed and traded on the Exchange. Shares will be freely tradable on the Exchange throughout the trading session. The price of Shares trading on the Exchange will be based on a current bid/offer market. The trading market on the Exchange affords investors the opportunity to assume and liquidate positions in Shares at their discretion, permitting them to take advantage of prices at any time during the trading day. This combination of intra-day liquidity with the Creation Unit purchase and redemption features creates potential arbitrage opportunities that, in turn, should and historically have proven to mitigate pricing inefficiencies.

The arbitrage mechanism will be facilitated by the transparency of the Funds' portfolios and the availability of the IIV, the liquidity of their Portfolio Securities and the ability to access those securities, as well as the arbitrageurs' ability to create workable hedges. As discussed above, there will be disclosure on each Business Day of the Funds' Portfolio Securities and the IIV will be disseminated every 15 seconds throughout the regular trading hours. The Funds will invest in Portfolio Securities with liquidity levels that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges. For these reasons, we expect arbitrageurs to be able to take advantage of price variations between the Funds' market prices and their NAVs. Thus, we expect a close alignment between their respective market prices and NAVs.

## III. Precedents

The SEC staff ("Staff") has previously issued the relief requested herein to other actively-managed ETFs<sup>1</sup> and to index-based ETFs.<sup>2</sup> These letters provided relief specific to the funds or classes of funds described therein and, therefore, the Trust and the Funds are not entitled to rely on them for relief. The Trust and the Funds note, however, that their proposal—the creation and issuance by an actively-managed investment company of shares

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<sup>1</sup> See Letter from Michele M. Anderson to Suzanne M. Russell, Esq., Chapman and Cutlet LLP, regarding First Trust Exchange-Traded Fund VI (January 8, 2014); Letter from Michele M. Anderson to John McGuire, Esq., Bingham McCutchen LLP, regarding SSgA Active ETF Trust (November 12, 2012) ("State Street letter"); Letter from James A. Brigagliano to Clifford Chance US LLP, regarding PowerShares Actively Managed Exchange Traded Fund Trust (April 4, 2008) and Letter from Josephine Tao, Assistant Director, Division of Market Regulation, to Jack P. Drogin, Esq., Schiff Hardin LLP, regarding WisdomTree Global Real Return Fund (Aug. 29, 2011).

<sup>2</sup> See Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Clair P. McGrath, Vice President and Special Counsel, The American Stock Exchange, regarding Exemptive Relief for Exchange-Traded Index Funds (August 17, 2001).

that individually trade on an Exchange, but that can only be purchased from and redeemed with the issuing investment company in large aggregations -- is no longer novel. The Commission has in the past sixteen years considered and approved many similar proposals. Some of the index-based products for which relief has been granted have been trading publicly for years, and the Trust is not aware of any abuses associated with them. Indeed, several of the index-based products have been so embraced by investors that they are routinely among the highest volume securities on the exchanges on which they trade.

#### IV. Creation and Redemption of Shares

Unlike typical mutual funds, the Funds do not sell their Shares directly to, or redeem their Shares directly from, individual investors. Rather, like other ETFs, they sell and redeem their Shares in large aggregations referred to as Creation Units. Transactions in Creation Units take place between the Funds and persons, typically broker-dealers, who have entered into contractual agreements with the Funds setting forth the terms under which these persons can purchase and redeem Shares in Creation Unit sized aggregations. These persons are known as "Authorized Participants." Also, unlike mutual funds, whose purchase and redemption transactions are almost always in cash, Creation Unit transactions are typically in-kind transactions. Each day before trading begins, each Fund will make publicly available the list of securities (the Creation/Redemption Basket) that Authorized Participants must deliver to purchase a Creation Unit and will receive if they redeem a Creation Unit. It is the fact that most Authorized Participants are broker-dealers that implicates Rule 14e-5.

Authorized Participants purchase Creation Units for a variety of reasons. The simplest example involves an individual investor who wants to buy a Creation Unit. The Authorized Participant will purchase on an Exchange or other trading market the Creation Basket, tender the securities to the Fund in return for the Creation Unit and transfer the Creation Unit to the investor. A more complicated example would be if the investor did not want to buy a full Creation Unit, but the Authorized Participant believed there was interest in the marketplace for additional Shares. The Authorized Participant would use the additional Shares to fulfill market demand and hold the remaining Shares in inventory pending sale to other investors.

Redemption transactions are mirror images of purchase transactions. An Authorized Participant might receive a full or partial Creation Unit from an investor, buy additional Shares, if necessary, tender the Creation Unit and receive the Redemption Basket, all or part of which would be transferred to the investor or sold on an Exchange with the cash proceeds provided to the investor. When buying the individual securities comprising a Creation Basket or tendering a Creation Unit in return for the Redemption Basket, the Authorized Participant will or could be deemed to be directly or indirectly purchasing securities, which would implicate Rule 14e-5 if the Authorized Participant is a dealer-manager for a tender offer for an individual security in the Creation or Redemption Basket.

V. Request for Relief from Rule 14e-5

Rule 14e-5 prohibits a “covered person” from directly or indirectly purchasing or arranging to purchase any subject securities of a tender offer (or related securities) except as part of such tender offer. The dealer-manager of a tender offer, in these facts also a broker-dealer and an Authorized Participant, is a “covered person” subject to the Rule and will comply with all provisions of Rule 14e-5 except for those from which this letter requests the exemption described below.

The Trust respectfully requests that the Commission grant exemptive relief from Rule 14e-5 to permit any person (including a member or member organization of the NYSE Area or another Exchange) acting as a dealer-manager of a tender offer for a security that is part of the group of securities that is received by an ETF when it issues a Creation Unit or part of the group of securities an ETF distributes when it redeems a Creation Unit, *i.e.*, a security that is part of a Creation Basket or Redemption Basket, during the existence of such offer, to: (1) redeem Shares of a Fund in Creation Units to the Trust for a Redemption Basket that may include a security subject to the tender offer; and (2) engage in secondary market transactions in Shares of a Fund during such tender offer, if such bids or purchases are not effected for the purposes of facilitating a tender offer and such transactions are in the ordinary course of business. Applicants believe that redemptions of Shares would not result in the abuses that Rule 14e-5 was designed to prevent. The acquisition of individual securities held by a Fund by means of redemptions of Shares of such Fund would be impractical and extremely inefficient in view of the relatively small number of shares of any one security included in a Redemption Basket and that a minimum of 25,000 Shares of a Fund (*i.e.*, the minimum size of a Creation Unit), or multiples thereof, be redeemed.

The Trust similarly believes that it would be equally inefficient to facilitate a tender offer in a particular security included in a Creation Basket by means of purchasing all of the specific Portfolio Securities comprising such Creation Basket. Rule 14e-5(b) excepts certain activities from the Rule’s prohibitions. In particular, Rule 14e-5(b)(5) excepts basket transactions subject to the following conditions:

- (i) The purchase or arrangement to purchase is made in the ordinary course of business and not to facilitate the tender offer;
- (ii) The basket contains 20 or more securities; and
- (iii) Covered securities and related securities do not comprise more than 5% of the value of the basket.

The dealer-managers will comply with the initial condition. From time to time, however, a change in the composition of the Portfolio Securities of the Funds may result in a change in the basket that has been established for purposes of purchasing its Creation Units. As a consequence, the basket could contain less than 20 securities and/or covered

securities and related securities could comprise more than 5% of the value of the basket. For example, a liquidation of the issuer of one of the securities or a merger involving the acquisition of the issuer of one of the securities could cause the number of securities in the basket to fall below 20 and/or could cause covered securities and related securities to comprise more than 5% of the value of the basket. Additionally, as a result of fluctuations in the market value of the securities held in the basket, covered securities and related securities could, at times, comprise more than 5% of the value of the basket. There are not any specific investment limitations set forth in the registration statement for the Funds that would prohibit a Fund from having fewer than 20 securities in its portfolio or having more than 5% of its portfolio in one security. As a result, the Funds are unable to rely on the existing exception for basket transactions.

In addition, application of the Rule's prohibition would impede the valid and useful market and arbitrage activity which would assist secondary market trading and improve the Shares' pricing efficiency. For example, an Authorized Participant who held Shares in inventory pending sale to investors might hedge its exposure by selling short Portfolio Securities, in which case the Authorized Participant's subsequent purchase of the Portfolio Securities to cover the short sale might implicate Rule 14e-5.

Therefore, to address situations where the basket contains less than 20 securities and/or covered securities and related securities comprise more than 5% of the value of the basket, the Trust also respectfully requests that the Commission take a no-action position under Rule 14e-5 if a broker-dealer, including a member or member organization of the NYSE Area or another Exchange, acting as a dealer-manager of a tender offer for a Portfolio Security held by a Fund purchases or arranges to purchase shares of such Portfolio Security in the secondary market for the purpose of tendering them to purchase one or more Creation Units of Shares of a Fund, if such transactions are not effected for the purposes of facilitating a tender offer. Relief would be necessary to permit such broker-dealers to effect purchases of Creation Units of Funds' Shares under such circumstances given that the exception for basket transactions would not be available. Applicants represent that all purchases of a Portfolio Security by a dealer-manager during the existence of a tender offer will be in the ordinary course of business as a result of the composition of a Fund's portfolio and believe that the purchase of a Portfolio Security during the existence of a tender offer would not result in the abuses that Rule 14e-5 was designed to prevent.<sup>3</sup>

## VI. Conclusion

Based on the foregoing, we respectfully request that the Commission or Staff grant the relief requested herein. The relief requested is substantially similar to those actions that the

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<sup>3</sup> The Commission has previously granted Rule 14e-5 exemptive and no-action relief to actively-managed and index-based ETFs. See notes 1 and 2 above, respectively.



Michele M. Anderson  
David L. Orlic, Esq.  
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Commission and the Staff have taken in similar circumstances. If you have any questions, please call me at (202) 261-3302.

Sincerely,



Jane A. Kanter