

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73321; File No. SR-NYSEArca-2014-113)

October 8, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Reflecting Changes in the Concentration Policies of ARK Innovation ETF and ARK Genomic Revolution ETF as well as a Change in the Name of the ARK Genomic Revolution ETF to the ARK Genomic Revolution Multi-Sector ETF

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on September 25, 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 reflect changes in the concentration policies of ARK Innovation ETF and ARK Genomic Revolution ETF, as well as a change in the name of the ARK Genomic Revolution ETF to the ARK Genomic Revolution Multi-Sector ETF. The text of the proposed rule change is available on the Exchange’s website 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

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<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.

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.

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

1. Purpose

The Commission has approved listing and trading on the Exchange of shares (“Shares”) of the ARK Innovation ETF and ARK Genomic Revolution ETF, (each, a “Fund” and collectively, the “Funds”) under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares.<sup>4</sup> Shares of the Funds have not commenced trading on the Exchange.

The Funds are series of the ARK ETF Trust (“Trust”). The Shares are offered by the Trust, which is registered with the Commission as an open-end management investment company.<sup>5</sup> The investment adviser to the Funds is ARK Investment Management LLC (“Adviser”).

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<sup>4</sup> See Securities Exchange Act Release No. 72641 (July 18, 2014), 79 FR 43108 (July 24, 2014) (SR-NYSEArca-2014-64) (order approving listing and trading on the Exchange 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) (“Prior Order”). See also Securities Exchange Act Release No. 72314 (June 4, 2014), 79 FR 33229 (June 10, 2014) (SR-NYSEArca-2014-64) (“Prior Notice,” and together with the Prior Order, the “Prior Release”).

<sup>5</sup> The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”). On September 11, 2014, the Trust filed with the Commission an amendment to 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”).

In this proposed rule change, the Exchange proposes to reflect a change to the Funds' concentration policies as well as the descriptions of the health care sector, which the Adviser will utilize to implement each Fund's investment objective, as described below.<sup>6</sup>

ARK Genomic Revolution Multi-Sector ETF

As described in the Prior Release, the investment objective of the ARK Genomic Revolution Multi-Sector ETF<sup>7</sup> is long-term growth of capital. 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.<sup>9</sup> As stated in the Prior Release, the Fund may invest its remaining assets in other securities and financial instruments, as described in the Prior Release.

The Prior Release stated that the Fund will be concentrated in issuers in any industry or group of industries in the health care sector. The Adviser wishes to supplement the description

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<sup>6</sup> The changes described herein will be filed with the Commission in an amendment to the Funds' Registration Statement. See note 5, supra. The Adviser represents that it will manage the Funds in the manner described in the Prior Release, and will not implement the changes described herein until the instant proposed rule change is operative.

<sup>7</sup> The name of the ARK Genomic Revolution Multi-Sector ETF has been changed from the ARK Genomic Revolution ETF.

<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.

<sup>9</sup> As described in the Prior Release, 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.

of the Fund's concentration policy to state that the Fund will be concentrated in issuers in any industry or group of industries in the health care sector, including, in particular, issuers having their principal business activities in the biotechnology industry.

The Prior Release stated that the 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. The Adviser wishes to revise the description of the health care sector to state that, while the health care sector includes the biotechnology industry, other industries in the health care sector include medical laboratories and research and drug manufacturers.

#### ARK Innovation ETF

As described in the Prior Release, the ARK Innovation ETF's investment objective is long-term growth of capital. The Fund will invest under normal circumstances<sup>10</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.<sup>11</sup> As stated in the Prior Release, the Fund may invest its remaining assets in other securities and financial instruments, as described in the Prior Release.

The Prior Release stated that the Fund will be concentrated in issuers in any industry or group of industries in the industrials and information technology sectors. The Adviser wishes to

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<sup>10</sup> See note 8, *supra*.

<sup>11</sup> As described in the Prior Release, 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, industrial innovation or the increased use of shared technology, infrastructure, and services.

revise the description of the Fund’s concentration policy to state that it will not be concentrated in any industry.

#### Other Investments

The Prior Release stated that each Fund will be classified as a “non-diversified” investment company under the 1940 Act<sup>12</sup> and therefore may concentrate its investments in any particular industry or group of industries, such that: (i) ARK Genomic Revolution Multi-Sector ETF will concentrate in securities of issuers having their principal business activities in any industry or group of industries in the health care sector; and (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.<sup>13</sup>

The Adviser wishes to revise the description of the Funds’ concentration to state that each Fund will be classified as a “non-diversified” investment company under the 1940 Act<sup>14</sup> and that neither of the Funds will be concentrated in any industry, except that ARK Genomic Revolution Multi-Sector ETF will concentrate in securities of issuers having their principal business activities in any industry or group of industries in the health care sector, including issuers having their principal business activities in the biotechnology industry.<sup>15</sup>

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<sup>12</sup> The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

<sup>13</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>14</sup> See note 12, supra.

<sup>15</sup> See note 13, supra.

The Adviser represents that there is no change to the Funds' investment objectives. The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

Except for the changes noted above, all other facts presented and representations made in the Prior Release remain unchanged.

All terms referenced but not defined herein are defined in the Prior Release.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>16</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, and is designed to promote just and equitable principles of trade and to protect investors and the public interest, in that the Adviser represents that there are no changes to the Funds' investment objectives and the proposed changes will clarify the Funds' concentration policies and the descriptions of the health care sector. There are no changes to the Funds' statements regarding how their assets primarily will be invested in normal circumstances and how they may invest remaining assets.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, and is designed to promote just and equitable principles of trade and to protect investors and the public interest, in that the change in the name of the ARK

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<sup>16</sup> 15 U.S.C. 78f(b)(5).

Genomic Revolution Multi-Sector ETF is designed to clarify that such Fund invests, on a multi-sector basis, in genomic revolution companies.

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 the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing requirements in NYSE Arca Equities Rule 8.600. The Adviser represents that there is no change to the Funds' investment objectives. Except for the changes noted above, all other representations made in the Prior Release remain unchanged.

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 purposes 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

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

Rule 19b-4(f)(6) thereunder.<sup>18</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. .

#### 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2014-113 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-2014-113. This file number should be included on the subject line if e-mail 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies

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<sup>18</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.



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 website 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. Copies of the 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-2014-113 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).