



SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-87863; File No. SR-CboeBZX-2019-109]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to List Shares of the ARK Genomic Revolution ETF and ARK Autonomous Technology and Robotics ETF under Rule 14.11(i), Managed Fund Shares

December 27, 2019

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 23, 2019, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 a rule change to list shares of the ARK Genomic Revolution ETF and ARK Autonomous Technology and Robotics ETF under Rule 14.11(i) (“Managed Fund Shares”), which are currently listed on NYSE Arca, Inc. (“Arca”). The shares of the Fund are referred to herein as the “Shares.” The Exchange has designated this proposal as non-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.⁵

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange's Office of the Secretary, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these 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 aspects of such statements.

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

1. Purpose

The Exchange proposes to list shares of the ARK Genomic Revolution ETF and ARK Autonomous Technology and Robotics ETF under Rule 14.11(i) ("Managed Fund Shares") (each, a "Fund" and, collectively, the "Funds"), which governs the listing and trading of Managed Fund Shares on the Exchange.⁶ The Exchange notes that the Commission previously approved a proposal to list and trade shares of the Funds on NYSE Arca, Inc. ("Arca").⁷ This proposal is substantively identical to the Prior Proposal and the issuer represents that all material

⁵ 17 CFR 240.19b-4(f)(6)(iii).

⁶ The Commission approved BZX Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

⁷ See Securities Exchange Act Release No. 72641 (July 18, 2014), 79 FR 43108 (July 18, 2014) (SR-NYSEArca-2014-64) (the "Prior Proposal").

representations contained within the Prior Proposal remain true. The Exchange notes that the Prior Proposal included two additional funds (the ARK Innovation ETF and the ARK Web x.0 ETF). The Exchange also notes that the Prior Proposal refers to the ARK Industrial Innovation ETF, which was subsequently renamed to the ARK Autonomous Technology and Robotics ETF. As further described below, the Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange’s surveillance procedures for derivative products, including Managed Fund Shares.

The Shares will be offered by ARK ETF Trust (the “Trust”), which is organized as a Delaware statutory trust and is registered with the Commission as an open-end management investment company.

Description of the Shares and the Fund

ARK Investment Management LLC (“Adviser”) serves as the investment adviser to the Funds. Foreside Fund Services, LLC (“Distributor”) is the principal underwriter and distributor of the Funds’ Shares. The Bank of New York Mellon serves as administrator, custodian and transfer agent (“Administrator”).

Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.⁸

⁸ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940, as amended (the “Advisers Act”). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the

In addition, Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Rule 14.11(i)(7) is similar to Rule 14.11(b)(5)(A)(i), however, Rule 14.11(i)(7) in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer. In the event that (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 such 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.

ARK Genomic Revolution ETF

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

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

According to the Registration Statement, the Fund will invest under Normal Market Conditions⁹ primarily (at least 80% of its assets) in domestic and foreign equity securities of companies that are relevant to the Fund's investment theme of genomics. Companies relevant to this theme are those that are focused on and are expected to benefit from extending and enhancing the quality of human and other life by incorporating technological and scientific developments, improvements and advancements in genetics into their business, such as by offering new products or services that rely on genetic sequencing, analysis, synthesis or instrumentation. These companies may include ones that develop, produce, manufacture or significantly rely on bionic devices, bio-inspired computing, bioinformatics, molecular medicine, and agricultural biology.

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

⁹ As defined in Rule 14.11(i)(3)(E), the term "Normal Market Conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

business cycle analysis) and “bottom up” (valuation, fundamental and quantitative measures) approaches to select investments for the Fund.

Under Normal Market Conditions, 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.¹⁰

According to the Registration Statement, the Fund’s investments will include issuers of micro-, small-, medium- and large-capitalizations. The Fund’s investments in foreign equity securities will be in both developed and emerging markets.¹¹

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

ARK Autonomous Technology and Robotics ETF

According to the Registration Statement, the ARK Autonomous Technology and Robotics ETF’s investment objective is long-term growth of capital.

According to the Registration Statement, the Fund will invest under Normal Market Conditions primarily (at least 80% of its assets) in domestic and foreign equity securities of

¹⁰ According to the Adviser, at least 90% of the 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.

¹¹ 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 (“Emerging Markets”). Investments in Emerging Markets equity securities will not exceed 20% of a Fund’s total assets.

companies that are relevant to the Fund’s investment theme of disruptive 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”), artificial intelligence (“artificial intelligence companies”), materials, and transportation.¹²

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

¹² According to the Registration Statement, the Adviser will consider a company to be an energy transformation company if it seeks to capitalize on innovations or evolutions in: (i) ways that energy is stored or used; (ii) the discovery, collection and/or implementation of new sources of energy, including unconventional sources of oil or natural gas and/or (iii) the production or development of new materials for use in commercial applications of energy production, use or storage. The Adviser will consider a company to be an automation transformation company if it is focused on man capitalizing on the productivity of machines, such as through the automation of functions, processes or activities previously performed by human labor or the use of robotics to perform other functions, activities or processes. The Adviser will consider a company to be an artificial intelligence (“AI”) company if it (i) designs, creates, integrates, or delivers robotics, autonomous technology, and/or AI in the form of products, software, or systems; (ii) develops the building block components for robotics, autonomous technology, or AI, such as advanced machinery, semiconductors and databases used for machine learning; (iii) provides its own value-added services on top of such building block components, but are not core to the company’s product or service offering; and/or (iv) develops computer systems that are able to perform tasks that normally require human intelligence, such as visual perception, speech recognition, decision-making, and translation between languages.

down” (macro-economic and business cycle analysis) and “bottom up” (valuation, fundamental and quantitative measures) approaches to select investments for the Fund.

Under Normal Market Conditions, 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.¹³

According to the Registration Statement, the Fund’s investments will include issuers of micro-, small-, medium- and large-capitalizations. The Fund’s investments in foreign equity securities will be in both developed and Emerging Markets.

According to the Registration Statement, the Fund will be concentrated in issuers in any industry or group of industries in the industrials¹⁴ and information technology sectors, although it will not concentrate in any specific industry.¹⁵

Other Investments

While each Fund will invest, under Normal Market Conditions, primarily in the equity securities described above, each Fund may invest in other investments, as described below.

¹³ According to the Adviser, at least 90% of the Fund’s investments in equity securities (including GDRs, ADRs, rights, warrants and preferred securities, discussed under “Other Investments,” below) 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.

¹⁴ According to the Registration Statement, the industrials sector includes companies engaged in the manufacture and distribution of capital goods, such as those used in defense, construction and engineering, companies that manufacture and distribute electrical equipment and industrial machinery and those that provide commercial and transportation services and supplies.

¹⁵ According to the Registration Statement, the information technology sector includes software developers, providers of information technology consulting and services and manufacturers and distributors of computers, peripherals, communications equipment and semiconductors.

Under Normal Market Conditions, such other investments will not exceed 20% of a Fund's assets.

According to the Registration Statement, each Fund may invest in the securities of open-end or closed-end investment companies, subject to applicable limitations under the 1940 Act. A Fund's investment in other investment companies may include shares of exchange traded funds registered under the 1940 Act ("ETFs"),¹⁶ 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,¹⁷ or other entities that are traded on an exchange.

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

The options in which the Funds may invest may be exchanged-traded or OTC. The exchange-traded options in which the Funds may invest will trade on markets that are members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange. The

¹⁶ For purposes of this filing, ETFs, which will be listed on a national securities exchange, shall mean the following: Investment Company Units (as described in BZX Rule 14.11(c)); Portfolio Depositary Receipts (as described in BZX Rule 14.11 (b)); and Managed Fund Shares (as described in BZX Rule 14.11(i)).

¹⁷ For purposes of this filing, ETPs shall mean Trust Issued Receipts (as described in BZX Rule 14.11(f)); Commodity-Based Trust Shares (as described in BZX Rule 14.11(e)(4)); Currency Trust Shares (as described in BZX Rule 14.11(e)(5)); Commodity Index Trust Shares (as described in BZX Rule 14.11(e)(6)); and Trust Units (as described in BZX Rule 14.11(e)(9)).

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

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

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

According to the Registration Statement, the Funds may enter into futures contracts and options, including options on futures contracts. Futures contracts generally provide for the future sale by one party and purchase by another party of a specified instrument, index or commodity at a specified future time and at a specified price. Futures contracts are standardized as to maturity

date and underlying instrument and are traded on futures exchanges. An option is a contract that provides the holder the right to buy or sell shares or futures at a fixed price, within a specified period of time.

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

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

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

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid investments that are assets (calculated at the time of investment), as deemed “illiquid” by the Adviser under the 1940 Act.¹⁸ Each Fund will monitor its portfolio liquidity on an ongoing basis

¹⁸ See Rule 22e-4(b)(1)(iv), which prohibits a fund from acquiring any illiquid investment if, immediately after the acquisition, the fund would have invested more than 15% of its net assets in illiquid investments that are assets. See also, Investment Company Act Release No. 32315 (Oct. 13, 2016), 81 FR 82142 (Nov. 18, 2016) (adopting Rule 22e-4 under the 1940 Act). Prior to the adoption of Rule 22e-4 in 2016, the Commission had

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 the Fund's net assets are held in illiquid investments that are assets.

Each Fund will be classified as a “non-diversified” investment company under the 1940 Act¹⁹ 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; and (ii) ARK Autonomous Technology and Robotics 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.²⁰ 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.

long-standing guidelines that required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also Investment Company Act Release Nos. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding “Restricted Securities”); and Investment Company Act Release 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A).

¹⁹ The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

²⁰ 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).

The Funds intend to qualify for and to elect treatment as a separate regulated investment company (“RIC”) under Subchapter M of the Internal Revenue Code.²¹

According to the Registration Statement, each Fund may take a temporary defensive position (investments in cash or cash equivalents) in response to adverse market, economic, political or other conditions.²² Cash equivalents shall mean 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.

Initial and Continued Listing

The Shares will be subject to BZX Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Act.²³ A minimum of 100,000 Shares will be outstanding at the commencement of listing on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. 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

²¹ 26 U.S.C. 851 et seq.

²² According to the Adviser, circumstances under which a Fund may temporarily depart from its normal investment process include, but are not limited to, extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

²³ See 17 CFR 240.10A-3.

multiple or inverse multiple (i.e., 2Xs or 3Xs) of the Fund's broad-based securities market index (as defined in Form N-1A).²⁴ All statements and representations made in this filing regarding (a) the description of each Fund's portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, (c) the dissemination and availability of the intraday indicative value and reference assets, or (d) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

Creation and Redemption of Shares

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

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

According to the Registration Statement, the Trust reserves the right to accept a basket of securities or cash that differs from Deposit Instruments or to permit or require the substitution of

²⁴ Each Fund's broad-based securities market index will be identified in a future amendment to the Registration Statement following each Fund's first full calendar year of performance.

an amount of cash (i.e., a “cash in lieu” amount) to be added to the Cash Amount to replace any Deposit Instrument which may, among other reasons, not be available in sufficient quantity for delivery, not be permitted to be re-registered in the name of the Trust as a result of an in-kind creation order pursuant to local law or market convention or which may not be eligible for transfer through the clearing process, or which may not be eligible for trading by a participating party.

According to the Registration Statement, all orders to create Creation Units must be received by the Distributor no later than the end of Regular Trading Hours²⁵ on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of the relevant Fund as determined on such date.

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

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

²⁵ Regular Trading Hours are 9:30 a.m. to 4:00 p.m. E.T.

Each Fund reserves the right to honor a redemption request by delivering a basket of securities or cash that differs from the Redemption Instruments.

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

According to the Registration Statement, the Administrator, through the NSCC, will make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m. E.T.), (a) the list of the names and the required number of each Deposit Instrument to be included in the current Creation Deposit (based on information at the end of the previous business day) as well as the Cash Amount for each Fund and (b) the Redemption Instruments that will be applicable to redemption requests received in proper form on that day. In addition, the Administrator, through the NSCC, also makes available on a continuous basis throughout the day, the Intraday Indicative Value.²⁶

Availability of Information

The Funds' website (www.ARK-Funds.com) will include a form of the prospectus for the Funds that may be downloaded. The Funds' website will include additional quantitative information updated on a daily basis, including, for each Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time

²⁶ The Intraday Indicative Value 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 Intraday Indicative Value 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 Intraday Indicative Value 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.

of calculation of such NAV (the “Bid/Ask Price”),²⁷ and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares during Regular Trading Hours on the Exchange, the Adviser will disclose on its website the Disclosed Portfolio, as defined in BZX Rule 14.11(i)(3)(B), that will form the basis for each Fund’s calculation of NAV at the end of the business day.²⁸

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’ website: 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 website information will be publicly available at no charge.

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

²⁷ The Bid/Ask Price of each Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the relevant Fund’s NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

²⁸ Under accounting procedures followed by the Funds, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

Investors will also be able to obtain the Trust's Statement of Additional Information ("SAI"), the Funds' Shareholder Reports, and the Trust's Form N-CSR and Form N-CEN. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N-CSR and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and underlying securities that are exchange listed, including equities (including common stock, partnership interests and business trust shares, as well as depositary receipts (excluding ADRs traded OTC and GDRs), rights, warrants, preferred securities, ETFs and ETPs (collectively, "Exchange Traded Equities")), will be available via the Consolidated Tape Association ("CTA") high-speed line and from the securities exchange on which they are listed. Quotation and last sale information for GDRs will be available from the securities exchange on which they are listed. Information relating to futures and options on futures also will be available from the exchange on which such instruments are traded. Information relating to exchange-traded options will be available via the Options Price Reporting Authority. Quotation information from brokers and dealers or pricing services will be available for ADRs traded OTC, investment company securities (other than ETFs), including closed end investment companies, unit investment trusts and open-end investment companies, non-exchange-traded derivatives, including forwards, swaps and certain options, and fixed income securities, including P-Notes, structured notes, debt securities, money

market instruments such as commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements, bonds and convertible securities, and shares of short-term fixed income or money market funds. Pricing information regarding each asset class in which the Funds will invest is generally available through nationally recognized data services providers through subscription agreements.

In addition, for each Fund, an estimated value, defined in BZX Rule 14.11(i)(3)(C) as the "Intraday Indicative Value," that reflects an estimated intraday value of a Fund's portfolio, will be disseminated. Moreover, the Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.²⁹ In addition, the quotations of certain of the Fund's holdings may not be updated during U.S. trading hours if such holdings do not trade in the United States or if updated prices cannot be ascertained.

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

Trading Halts

²⁹ Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Intraday Indicative Values published via the Consolidated Tape Association ("CTA") or other data feeds.

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.³⁰ Trading in Shares of the Funds will be halted if the circuit breaker parameters in BZX Rule 11.18 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to BZX Rule 11.18, which sets forth circumstances under which Shares of a Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 8:00 a.m. until 5:00 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 14.11(i)(2)(C), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is \$0.01.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares

³⁰ See BZX Rule 11.18.

through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares.

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 the Exchange, or FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying Exchange Traded Equities, exchange traded options and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying Exchange Traded Equities, exchange traded options and futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.³¹ At least 90% of each Fund's investments in equity securities (including GDRs and ADRs) will be in securities that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. The exchange-traded options in which the Funds may invest will trade on markets that are members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange. Each Fund will not invest more than 10% of its assets in futures that trade in markets that are not members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange.

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

³¹ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Disclosed Portfolio for each Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Information Circular

Prior to the commencement of listing on the Exchange, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening³² and After Hours Trading Sessions³³ when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Funds for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that each Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of each of the Funds and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of

³² The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. E.T.

³³ The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. E.T.

the Fund will be publicly available on each Fund’s website. In addition, the Information Circular will reference that the Trust is subject to various fees and expenses described in each Fund’s Registration Statement.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)³⁴ 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 notes that the Commission has previously approved the listing and trading of the Shares.³⁵ The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the applicable initial and continued listing criteria in BZX Rule 14.11(i). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. If the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser to the investment company shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. The Exchange will communicate as needed regarding trading in the Shares and underlying Exchange Traded Equities, exchange

³⁴ 15 U.S.C. 78f(b)(5).

³⁵ See Securities Exchange Act Release No. 72641 (July 18, 2014), 79 FR 43108 (July 18, 2014) (SR-NYSEArca-2014-64).

traded options and futures with other markets and other entities that are members of the ISG, and may obtain trading information regarding trading in the Shares and underlying Exchange Traded Equities, exchange traded options and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and Exchange Traded Equities, exchange traded options and futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. At least 90% of each Fund's investments in equity securities (including GDRs and ADRs) will be in securities that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. The exchange-traded options in which the Funds may invest will trade on markets that are members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange. Each Fund will not invest more than 10% of its assets in futures that trade in markets that are not members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange. Additionally, all statements and representations made in this filing regarding (a) the description of each Fund's portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, (c) the dissemination and availability of the intraday indicative value and reference assets, or (d) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

The Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer. In the event (a) the Adviser or any sub-adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new adviser or sub-adviser is, or becomes affiliated with, a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or

changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser consistent with Commission guidance. Each Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Regular Trading Hours. On each business day, before commencement of trading in Shares in the Regular Trading Hours on the Exchange, the Adviser will disclose on its website the Disclosed Portfolio that will form the basis for the Funds' calculation of NAV at the end of the business day.

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

listed. Information relating to futures and options on futures also will be available from the exchange on which such instruments are traded.

Information relating to exchange-traded options will be available via the Options Price Reporting Authority. Quotation information from brokers and dealers or pricing services will be available for ADRs traded OTC, investment company securities (other than ETFs), including closed end investment companies, unit investment trusts and open-end investment companies, non-exchange-traded derivatives, including forwards, swaps and certain options, and fixed income securities, including P-Notes, structured notes, debt securities, money market instruments such as commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements, bonds and convertible securities, and shares of short-term fixed income or money market funds. Pricing information regarding each asset class in which the Funds will invest is generally available through nationally recognized data services providers through subscription agreements. The website for the Funds will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of listing on the Exchange, the Exchange will inform its Members in an Information Circular of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted under the conditions specified in BZX Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to BZX Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of the Fund may be halted. As noted above, investors will also have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather, will facilitate the transfer from Arca and listing of additional actively-managed exchange-traded products on the Exchange, which will enhance competition among listing venues, to the benefit of issuers, investors, and the marketplace more broadly.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act³⁶ and Rule 19b-4(f)(6) thereunder.³⁷

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act³⁸ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)³⁹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the 30-day operative delay would allow the Shares to be listed on the Exchange in December 2019, which would allow the Funds to avoid paying 2020 listing fees to Arca, fees which would otherwise be applied at the beginning of January 2020. Further, the Commission notes that the proposal, with respect to the Funds, is substantively identical to the Prior Proposal,⁴⁰ and the issuer represents that all material representations contained within the Prior Proposal remain true. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public

³⁶ 15 U.S.C. 78s(b)(3)(A).

³⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

³⁸ 17 CFR 240.19b-4(f)(6).

³⁹ 17 CFR 240.19b-4(f)(6)(iii).

⁴⁰ See supra note 7.

interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.⁴¹

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2019-109 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-CboeBZX-2019-109. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

⁴¹ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-CboeBZX-2019-109, and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴²

J. Matthew DeLesDernier,
Assistant Secretary.

⁴² 17 CFR 200.30-3(a)(12).

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