

a national securities association.<sup>108</sup> In particular, the Commission finds that the Amended Current Proposal is consistent with Section 15A(b)(6) of the Act,<sup>109</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The rule will permit arbitrators to refer to FINRA any matter or conduct that an arbitrator has reason to believe poses a serious threat, whether ongoing or imminent, that is likely to harm investors unless immediate action is taken. The Commission believes that allowing arbitrators to voice a serious concern under extremely limited circumstances provides a necessary means of alerting FINRA senior staff should an arbitrator have reason to believe during the pendency of an arbitration that there is a threat of serious ongoing or imminent harm. This notification would provide FINRA with earlier warning of potentially harmful conduct than might otherwise occur, and allow FINRA to better protect investors by intervening more quickly under the appropriate circumstances.

As FINRA acknowledges, the rule may cause delays and increase costs for a claimant in some instances. However, the rule is designed in a way that should make its invocation rare, limiting such negative effects. First, the standard for reporting is high. Because the rule limits mid-case referrals to situations where the arbitrator has reason to believe that a matter or conduct poses a serious threat likely to harm investors unless immediate action is taken, it should be rarely invoked. Second, permitting mid-case referrals only for matters or conduct unearthed during the proceedings—and not on the basis of allegations in the pleadings—means that an arbitrator will need to make a mid-case referral decision only in cases when FINRA might not otherwise know about the potentially harmful conduct. Third, the proposal allows an arbitrator to delay making a mid-case referral when, in the arbitrator's judgment, investor protection would not be materially compromised, further reducing the number of times the rule is invoked. Fourth, as amended, the rule limits recusal requests based on the referral itself to three days after the parties are notified of the recusal,

limiting the opportunity for recusal requests and the potential strategic delay of a recusal request.

Even in those rare instances where the rule is invoked and there is potential harm to an investor whose case involves a referral, such as a delay or additional costs, FINRA has identified ways that such harm can be limited. First, allocation of costs by an arbitrator or panel can take into account relative fault of the parties. Second, FINRA will bear certain costs itself, such as paying a replacement arbitrator to review the hearing record and to learn about the arbitration up to the point where the case was interrupted. Third, FINRA has identified ways in which the parties themselves can help minimize costs and delays, such as by agreeing to rehear only key witnesses, or stipulating to summaries of prior testimony.

While this would not eliminate every potential cost or dilatory burden on an investor whose case may be adversely affected by a referral, we believe FINRA has identified ways those harms to parties in arbitration can be mitigated or minimized while better protecting investors and the public interest.

Moreover, notifying parties of the fact of a referral can help to safeguard the fairness of the arbitration forum by keeping the parties equally informed, consistent with current arbitration practices. Also, having the Director or President serve as an intake point for any referrals would result in an efficient review and assignment process, and could help direct appropriate resources toward potentially harmful conduct as quickly as possible. In addition, by requiring requests for recusal to be made within three days of being notified, the rule will limit the uncertainty associated with whether a mid-case referral will result in an eventual recusal request. The Commission notes also that a recusal request can still be made for any reason at any time for reasons other than the referral request itself.

In light of the potential gravity of the misconduct that may be reported, and because we believe the potential negative effects will be relatively limited and partially mitigated by the operation of other FINRA rules, we believe the Amended Current Proposal is consistent with the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

We appreciate the concerns of some commenters that mid-case referrals may disrupt or delay some arbitration proceedings. Therefore, as some

commenters have suggested, and FINRA has agreed, FINRA will gather statistics and report to the Commission, for the period of one year from the effective date of this rule change and for later periods upon request, on the number of cases in which an arbitrator made a mid-case referral. FINRA will also monitor the effects of the Amended Current Proposal to determine whether further action is necessary.

## V. Conclusion

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act<sup>110</sup> that the proposed rule change (SR-FINRA-2014-0005), as modified by Partial Amendment No. 1, be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>111</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73318; File No. SR-ISE-2014-49]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 723 to Add a New PIM ISO Order Type

October 8, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 3, 2014 the International Securities Exchange, LLC ("Exchange" or "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I and II below, which items have been prepared by the self-regulatory organization. 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 ISE proposes to amend its rules to add a new PIM ISO order type. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the principal

<sup>108</sup> In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>109</sup> 15 U.S.C. 78o-3(b)(6).

<sup>110</sup> 15 U.S.C. 78s(b)(2).

<sup>111</sup> 17 CFR 200.30-3(a)(12).

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

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

office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 purpose of this proposed rule change is to amend the Exchange's rules to add a new PIM ISO order type.

The Price Improvement Mechanism ("PIM") is a process that allows Electronic Access Members ("EAM") to provide price improvement opportunities for a transaction wherein the Member seeks to execute an agency order as principal or execute an agency order against a solicited order (a "Crossing Transaction"). A Crossing Transaction is comprised of the order the EAM represents as agent (the "Agency Order") and a counter-side order for the full size of the Agency Order (the "Counter-Side Order"). The Counter-Side Order may represent interest for the Member's own account, or interest the Member has solicited from one or more other parties, or a combination of both. A Crossing Transaction must be entered only at a price that is equal to or better than the national best bid or offer ("NBBO") and better than the limit order or quote on the ISE orderbook on the same side of the Agency Order.

An intermarket sweep order ("ISO") is defined in Rule 1900(h) as a limit order that is designated as an ISO in the manner prescribed by the Exchange and is executed within the system by Members at multiple price levels without respect to Protected Quotations of other Eligible Exchanges as defined in Rule 1900.<sup>3</sup> ISOs are immediately

executable within the Exchange's options trading system or cancelled, and shall not be eligible for routing as set out in Rule 1900. Simultaneously with the routing of an ISO to the Exchange's options trading system, one or more additional limit orders, as necessary, are routed by the entering party to execute against the full displayed size of any Protected Bid or Protected Offer in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified as an ISO. These additional routed orders must be identified as ISOs.

The Exchange proposes to implement a PIM ISO order type ("PIM ISO") that will allow the submission of an ISO into the PIM. Specifically, a PIM ISO is the transmission of two orders for crossing pursuant to Rule 723 without regard for better priced Protected Bids or Protected Offers because the Member transmitting the PIM ISO to the Exchange has, simultaneously with the routing of the PIM ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PIM auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the PIM order, meaning that any execution(s) obtained from the away side will be given to the agency side of the order.

The Exchange will accept a PIM ISO provided the order adheres to the current PIM order acceptance requirements outlined above, but without regard to the NBBO. The Exchange will execute the PIM ISO in the same manner that it currently executes PIM orders, except that it will not protect prices away. Instead, order flow providers will bear the responsibility to clear all better priced interest away simultaneously with

by an Eligible Exchange. "Bid" or "Offer" means the bid price or the offer price communicated by a member of an Eligible Exchange to any broker or dealer, or to any customer, at which it is willing to buy or sell, as either principal or agent, but shall not include indications of interest. The "OPRA Plan" means the plan filed with the SEC pursuant to Section 11Aa(1)(C)(iii) of the Act, approved by the SEC and declared effective as of January 22, 1976, as from time to time amended. "Best Bid" and "Best Offer" mean the highest priced Bid and the lowest priced Offer. Finally, "Eligible Exchange" means a national securities exchange registered with the SEC in accordance with Section 6(a) of the Act that: (i) Is a Participant Exchange in The Options Clearing Corporation ("OCC") (as that term is defined in Section VII of the OCC by-laws); (ii) is a party to the OPRA Plan; and (iii) if the national securities exchange is not a party to the OPRA Plan, is a participant in another plan approved by the Commission providing for comparable trade-through and locked and crossed market protection.

submitting the PIM ISO order. There is no other impact to PIM functionality. Specifically, liquidity present at the end of the PIM auction will continue to be included in the PIM auction as it is with PIM orders not marked as ISOs.

The Exchange will announce the implementation of this order type in an information circular.

#### 2. Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act")<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>5</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change promotes just and equitable principles or trade and removes impediments to a free and open market in that it promotes competition, as described below. Specifically, the proposal allows the Exchange to offer its members an order type that is already offered by another exchange.<sup>6</sup> In addition, the proposal benefits traders and investors because it adds a new order type for seeking price improvement through the PIM. Finally, the proposal does not unfairly discriminate among members because all Members are eligible to submit a PIM ISO order.

### 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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to adopt a PIM ISO order type is pro-competitive because it will enable the Exchange to provide market participants with an additional method of seeking price improvement through the PIM. The proposed rule change will also allow the Exchange to compete with other markets that already allow an ISO order type in their price improvement mechanisms.<sup>7</sup>

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

The Exchange has not solicited, and does not intend to solicit, comments on

<sup>4</sup> 15 U.S.C. 78f(b).

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

<sup>6</sup> See NASDAQ OMX PHLX LLC ("PHLX") Rule 1080, Commentary .09.

<sup>7</sup> *Id.*

<sup>3</sup> Under Rule 1900, a "Protected Quotation" includes a Protected Bid or Protected Offer. A "Protected Bid" or "Protected Offer" means a Bid or Offer in an options series, respectively, that: (i) Is disseminated pursuant to the OPRA Plan; and (ii) is the Best Bid or Best Offer, respectively, displayed

this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)<sup>9</sup> thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, 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.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

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.<sup>12</sup>

### IV. Solicitation of Comments

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

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2014-49 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-ISE-2014-49. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2014-49 and should be submitted on or before November 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73321; File No. SR-NYSEArca-2014-113]

#### **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**

October 8, 2014.

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 Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>13</sup> 17 CFR 200.30-3(a)(12).