

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CHX-2014-10 and should be submitted on or before August 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72708; File No. SR-NYSEArca-2014-82]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Clarifying the Exchange's Use of Certain Data Feeds for Order Handling and Execution, Order Routing, and Regulatory Compliance

July 29, 2014.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") <sup>2</sup> and Rule 19b-4 thereunder, <sup>3</sup> notice is hereby given that, on July 18, 2014, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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 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 Exchange proposes to clarify the Exchange's use of certain data feeds for order handling and execution, order routing, and regulatory compliance. 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.

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

##### 1. Purpose

On June 5, 2014, in a speech entitled "Enhancing Our Market Equity Structure," [sic] Mary Jo White, Chair of the Securities and Exchange Commission ("SEC" or the "Commission") requested the equity exchanges to file with the Commission the data feeds used for purposes of (1) order handling and execution (e.g., with pegged or midpoint orders); (2) order routing, and (3) regulatory compliance, if applicable.<sup>4</sup> Subsequent to the Chair's speech, the Division of Trading and Markets stated that it "believes there is a need for clarity regarding whether (1) the SIP data feeds, (2) proprietary data feeds, or (3) a combination thereof," are used for these purposes and requested that proposed rule changes be filed that disclose such information.<sup>5</sup> The stated goal of disclosing this information is to provide broker-dealers and investors with enhanced transparency to better assess the quality of an exchange's execution and routing services.

The data feeds available for the purposes of order handling and execution, order routing, and regulatory compliance include the exclusive securities information processor ("SIP") data feeds <sup>6</sup> or proprietary data feeds from individual market centers.

<sup>4</sup> See Mary Jo White, Chair, Securities and Exchange Commission, Speech at the Sandler, O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available at [www.sec.gov/News/Speech/Detail/Speech/1370542004312#.U5HI-fmwjiw](http://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.U5HI-fmwjiw)).

<sup>5</sup> See Letter from James Burns, Deputy Director, Division of Trading and Markets, Securities and Exchange Commission, to Jeffrey C. Sprecher, Chief Executive Officer, Intercontinental Exchange, Inc., dated June 20, 2014.

<sup>6</sup> The SIP feeds are disseminated pursuant to effective joint-industry plans as required by Rule 603(b) of Regulation NMS. 17 CFR 242.603(b). The three joint-industry plans are: (1) The CTA Plan, which is operated by the Consolidated Tape Association and disseminates transaction information for securities with the primary listing market on exchanges other than NASDAQ Stock Market LLC ("Nasdaq"); (2) The CQ Plan, which disseminates consolidated quotation information for securities with their primary listing on exchanges other than Nasdaq; and (3) the Nasdaq UTP Plan, which disseminates consolidated

(i) Overview of Exchange Rules Governing Order Handling, Execution, and Routing

The Exchange adopted its order execution and order routing rules to comply with Regulation NMS.<sup>7</sup> As such, before executing any arriving or resting interest, the Exchange evaluates whether the execution would trade through a protected quotation <sup>8</sup> in violation of Rule 611 of Regulation NMS ("Rule 611"),<sup>9</sup> and if so, whether it is eligible for an exception to Rule 611. The Exchange also evaluates whether displaying a bid or offer would result in locking or crossing a protected quotation in violation of Rule 610(d) of Regulation NMS ("Rule 610(d)"),<sup>10</sup> or if it is eligible for an exception to Rule 610(d).

If any protected quotation is superior to the Exchange's best bid or offer, the Exchange may route a marketable order as an Intermarket Sweep Order ("ISO") <sup>11</sup> (if consistent with the order's instructions), unless a trade-through exception applies under Rule 611(b). Likewise, if the display of an order would lock or cross a protected quotation, the Exchange may route such interest to one or more protected quotations, if consistent with the order's instructions. In addition, if consistent with an order's instructions, the Exchange may also route an order to other available quotes in the Exchange's routing determination.<sup>12</sup> The Exchange further notes that its routing brokers do

transaction and quotation information for securities with their primary listing on Nasdaq.

<sup>7</sup> See Securities Exchange Act Release No. 54549 (Sept. 29, 2006), 71 FR 59179 (Oct. 6, 2006) (SR-NYSEArca-2006-59) (Order approving the Exchange's rule proposal to bring its rules into conformity with Regulation NMS).

<sup>8</sup> A "protected bid" or "protected offer" means a quotation in an NMS stock that (i) is displayed by an automated trading center; (ii) is disseminated pursuant to an effective national market system plan; and (iii) is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc. 17 CFR 242.600(b)(57). A "protected quotation" means a protected bid or a protected offer. See 17 CFR 242.600(b)(58). The PBBO is the best-priced protected bid and the best-priced protected offer.

<sup>9</sup> 17 CFR 242.611.

<sup>10</sup> 17 CFR 242.610(d).

<sup>11</sup> An ISO is defined as a limit order for a NMS Stock that (i) when routed to a trading center, is identified as an ISO; and (ii) simultaneously with the routing of the ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the MNMS [sic] stock with a price that is superior to the limit price of the ISO. See also Rule 7.37(d)(2)(B)(i).

<sup>12</sup> See NYSE Arca Equities Rules 7.37(d)(2)(A) and 7.37(d)(4).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

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

not have any discretion about where to route such interest.<sup>13</sup>

(ii) Exchange's Stated Policy, Practice, or Interpretation With Respect to the Meaning, Administration, or Enforcement of an Existing Rule Regarding How and for What Purpose it Uses Data Feeds

The Exchange uses the following feeds to determine protected quotations on markets other than the Exchange for purposes of compliance with Rule 611 and Rule 610(d), including identifying where to route ISOs, to calculate the PBBO or NBBO for purposes of order types that are priced based on the PBBO or NBBO,<sup>14</sup> to route interest pursuant to NYSE Arca Equities Rule 7.37(d)(2)(A), and to determine the NBB for purposes of complying with Rule 201 of Regulation SHO and NYSE Arca Equities Rule 7.16(f):<sup>15</sup>

- BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., and NYSE MKT LLC: SIP data feeds only.

- BATS Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc. NASDAQ OMX BX LLC, NASDAQ OMX PHLX LLC, NASDAQ Stock Market LLC and New York Stock Exchange LLC: A combination of proprietary data feeds from each respective exchange and the SIP data feeds.

In addition, the Exchange receives data feeds directly from broker dealers for purposes of routing interest pursuant to NYSE Arca Equities Rule 7.37(d)(2)(A).

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>16</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>17</sup> in particular, because it is designed to

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market because it provides enhanced transparency to better assess the quality of an exchange's execution and routing services.

### 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 proposed change is not designed to address any competitive issue but rather would provide the public and investors with information about which data feeds that the Exchange uses for execution and routing decisions.

### 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 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 if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</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. If the Commission takes such action, the Commission will 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2014-82 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-2014-82. 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 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

<sup>13</sup> See NYSE Arca Equities Rule 7.45(b)(1).

<sup>14</sup> The NBBO is defined as the best bid and best offer of an NMS security that is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan. 17 CFR 242.600(b)(3). The Exchange notes that the NBBO may differ from the PBBO because the NBBO includes Manual Quotations, which are defined as any quotation other than an automated quotation. 17 CFR 242.600(b)(37). By contrast, a protected quotation is an automated quotation that is the best bid or offer of a national securities exchange. 17 CFR 242.60(b)(57)(iii) [sic].

<sup>15</sup> NYSE Arca Equities Rule 7.16(f) requires that Exchange systems not execute or display a short sale order with respect to a covered security at a price that is less than or equal to the current NBB if the price of that security decreases by 10% or more, as determined by the Exchange, from the security's closing price on the Exchange at the end of regular trading hours on the prior day.

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

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6). 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 Commission deems this requirement to have been met.

available publicly. All submissions should refer to File Number SR–NYSEArca–2014–82 and should be submitted on or before August 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72714; File No. SR–NYSEArca–2014–41]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change, as Modified by Amendment Nos. 1 and 4 Thereto, Relating to Listing and Trading of Shares of the Reality Shares DIVS Index ETF under NYSE Arca Equities Rule 5.2(j)(3)

July 29, 2014.

On April 11, 2014, NYSE Arca, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the Reality Shares DIVS Index ETF (“Fund”) (formerly, Reality Shares Isolated Dividend Growth Index ETF) under NYSE Arca Equities Rule 5.2(j)(3). The proposed rule change was published for comment in the **Federal Register** on April 30, 2014.<sup>3</sup> On May 6, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.<sup>4</sup> On June 6, 2014, the Exchange filed Amendment No. 4 to the proposed rule change.<sup>5</sup> On June 13, 2014, pursuant to

Section 19(b)(2) of the Act,<sup>6</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>7</sup> The Commission received no comment letters on the proposed rule change. This Order institutes proceedings under Section 19(b)(2)(B) of the Act <sup>8</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment Nos. 1 and 4 thereto.

### I. Description of the Proposal

#### A. In General

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 5.2(j)(3), which governs the listing and trading of Investment Company Units on the Exchange.<sup>9</sup> The Shares of the Fund will be offered by the Reality Shares ETF Trust (formerly, the ERNY Financial ETF Trust) (“Trust”). The Trust will be registered with the Commission as an open-end management investment company.<sup>10</sup> Reality Shares Advisors,

both Amendment Nos. 2 and 3. In Amendment No. 4, the Exchange amended the proposal to reflect a name change to the Fund and the underlying index. Specifically, the Exchange replaced each reference to “Reality Shares Isolated Dividend Growth Index ETF” in the proposal with “Reality Shares DIVS Index ETF” and replaced each reference to “Reality Shares Isolated Dividend Growth Index” in the proposal with “Reality Shares DIVS Index.” Amendment No. 4 is a technical amendment and is not subject to notice and comment as it does not materially affect the substance of the filing.

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> See Securities Exchange Act Release No. 72385, 79 FR 35205 (Jun. 19, 2014). The Commission designated a longer period within which to take action on the proposed rule change and designated July 29, 2014, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>8</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>9</sup> NYSE Arca Equities Rule 5.2(j)(3)(A) provides that an Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities).

<sup>10</sup> According to the Exchange, the Trust will be registered under the Investment Company Act of 1940 (“1940 Act”). On November 12, 2013, the Trust filed a registration statement on Form N–1A under the Securities Act of 1933 (“1933 Act”) and under the 1940 Act relating to the Fund, as amended by Pre-Effective Amendment Number 1, filed with the Commission on February 6, 2014 (File Nos. 333–192288 and 811–22911) (the “Registration Statement”). The description of the operation of the Trust and the Fund 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. Investment Company Act Release No. 30678

LLC (formerly, ERNY Financial Advisors, LLC) will serve as the investment adviser to the Fund (“Adviser”). ALPS Distributors, Inc. will be the principal underwriter and distributor of the Fund’s Shares. The Bank of New York Mellon will serve as administrator, custodian and transfer agent for the Fund.

#### B. The Exchange’s Description of the Fund

The Exchange has made the following representations concerning the Fund.

The Fund will seek long-term capital appreciation by tracking the performance of the Reality Shares DIVS Index (“Index”). The Index was developed and is maintained by Reality Shares, Inc. (“Index Provider”).<sup>11</sup> The Adviser is a wholly-owned subsidiary of the Index Provider. The Index Provider is not registered as an investment adviser or broker-dealer and is not affiliated with any broker-dealer. The Adviser is not registered as a broker-dealer and is not affiliated with any broker-dealer.<sup>12</sup>

#### 1. Index Methodology

The Index will be calculated using a proprietary, rules-based methodology designed to track market expectations for dividend growth conveyed in real-time using the mid-point of the bid-ask spread on S&P 500 Index options and options on exchange-traded funds (“ETFs”) <sup>13</sup> designed to track the S&P

(Aug. 27, 2013) (“Exemptive Order”). The Exchange states that investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

<sup>11</sup> The Index will be calculated by International Data Corporation, which is not affiliated with the Adviser or the Index Provider, and which is not a broker-dealer or fund advisor. Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3) provides that, if the applicable index is maintained by a fund advisor or a broker-dealer, the fund advisor or broker-dealer shall erect a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer or fund advisor.

<sup>12</sup> The Adviser and the Index Provider have represented that a fire wall exists around the respective personnel who have access to information concerning changes and adjustments to the Index. The Exchange notes that, in the event (a) the Adviser, any sub-adviser, or the Index Provider becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser, sub-adviser, or Index Provider is a registered broker-dealer or becomes affiliated with a broker-dealer, that entity will implement a fire wall with respect to their relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition of or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio.

<sup>13</sup> For purposes of this proposed rule change, such ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)) and

<sup>20</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 72015 (Apr. 24, 2014), 79 FR 24475 (“Notice”).

<sup>4</sup> In Amendment No. 1, the Exchange clarified the valuation of investments for purposes of calculating net asset value, provided additional details regarding the dissemination of the Disclosed Portfolio, and made other minor technical edits to the proposed rule change. Amendment No. 1 provided clarification to the proposed rule change, and because it does not materially affect the substance of the proposed rule change or raise novel or unique regulatory issues, Amendment No. 1 is not subject to notice and comment.

<sup>5</sup> The Exchange filed Amendment No. 2 on June 4, 2014 and withdrew it on June 5, 2014, and filed Amendment No. 3 on June 5, 2014 and withdrew it on June 6, 2014. Amendment No. 4 supersedes