

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, May 24, 2012 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Gallagher, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, May 24, 2012 will be:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings;
- Consideration of amicus participation; and
- Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551-5400.

Dated: May 17, 2012.

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67000; File No. SR-CBOE-2012-039]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 3.6A—Qualification and Registration of Trading Permit Holders and Associated Persons

May 16, 2012.

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 May 3, 2012, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) 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 CBOE. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>5</sup> the Chicago Board Options Exchange, Incorporated (“CBOE” or the “Exchange”) proposes to (i) remove the language in Interpretation and Policy .05 relating to acceptable substitute qualification examinations; (ii) codify into the Exchange’s rules required registration categories for Trading Permit Holders and TPH organizations that conduct proprietary trading, market-making and/or that effect transactions on behalf of broker dealers; (iii) specify the acceptable qualification requirements for Trading Permit Holders and TPH organizations that conduct proprietary trading, market-making and/or that effect transactions on behalf of broker dealers; (iv) add an interpretation to state explicitly in the rule that

individual Trading Permit Holders and individual associated persons must satisfy all registration and qualification requirements prior to acting in such registered capacity on behalf of a Trading Permit Holder or TPH organization; and (v) clarify the requirements applicable to Proprietary Trader Principals (TP) associated with a Trading Permit Holder or TPH organization. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.org/legal>), at the Exchange’s Office of the Secretary and at the Commission.

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

In its filing with the Commission, CBOE 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. CBOE 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, Proposed Rule Change

###### 1. Purpose

CBOE proposes to amend Rule 3.6A to (i) remove the language in Interpretation and Policy .05 relating to acceptable substitute qualification examinations; (ii) codify into the Exchange’s rules required registration categories for Trading Permit Holders and TPH organizations that conduct proprietary trading, market-making and/or that effect transactions on behalf of broker dealers; (iii) specify the acceptable qualification examinations (and related registration categories) for Trading Permit Holders and TPH organizations that conduct proprietary trading, market-making and/or that effect transactions on behalf of broker dealers; (iv) add an interpretation to state explicitly in the rule that individual Trading Permit Holders and individual associated persons must satisfy all registration and qualification requirements prior to engaging in the securities business of a Trading Permit Holder or TPH organization (or prior to acting in a new capacity on behalf of a Trading Permit Holder or TPH organization where such capacity has additional registration/qualification requirements); and (v) clarify the

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

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

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

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

<sup>5</sup> 15 U.S.C. 78s(b)(1).

requirements applicable to Proprietary Trader Principals (TP) associated with a Trading Permit Holder or TPH organization.

CBOE is proposing to identify the registration categories and qualification requirements for Trading Permit Holders and TPH organizations in the proposed Interpretation and Policy .08 to Rule 3.6A. CBOE Rule 3.6A(a) provides that individual Trading Permit Holders and individual associated persons engaged or to be engaged in the securities business of a Trading Permit Holder or TPH organization shall be registered with the Exchange in the category of registration appropriate to the function to be performed as prescribed by the Exchange.<sup>6</sup> On June 28, 2011, the Exchange issued a Regulatory Circular prescribing the registration and qualification requirements (including prerequisite examinations) for Trading Permit Holders and TPH organizations conducting proprietary trading, market-making and/or effecting transactions on behalf of other broker-dealers.<sup>7</sup> These requirements included registration by individual Trading Permit Holders and individual associated persons under three new categories of registration, as applicable. An individual Trading Permit Holder and/or individual associated person who is engaged in the securities business of a Trading Permit Holder (as described in Interpretation and Policy .06 to Rule 3.6A) is required to register as a Proprietary Trader (PT) in WebCRD and pass the related qualification examination, the Series 56. An individual Trading Permit Holder or individual associated person is required to register as a Proprietary Trader Principal (TP) in WebCRD and pass the related qualification examination, the Series 24 (and the prerequisite examination, the Series 56) if such individual acts in any of the following capacities on behalf of a Trading Permit Holder: (i) Officer; (ii) partner; (iii) director; (iv) supervisor of proprietary trading, market-making or brokerage activities; and/or (v) supervisor of those engaged in proprietary trading, market-making or brokerage activities with respect to those activities. Lastly, the Chief Compliance Officer (or individual performing similar functions) for a Trading Permit Holder or TPH organization that engages in proprietary trading, market-making or effecting transactions on behalf of a broker-dealer

is required to register as a Proprietary Trader Compliance Officer (CT) in WebCRD and pass the related qualification examination, the Series 14 (and the prerequisite examination, the Series 56). This proposal does not add any new requirements but codifies the requirements previously prescribed by the Exchange in Regulatory Circular RG11-077.

CBOE is proposing to remove the language from Interpretation and Policy .05 to Rule 3.6A relating to acceptable substitute qualification requirements and instead incorporate those requirements into Interpretation and Policy .08(b). CBOE is proposing to include a chart in Interpretation and Policy .08(b) to Rule 3.6A to identify the required registration categories, the applicable qualification examinations as set forth above and the alternative acceptable qualifications for each of the three registration categories referenced above. The language proposing the alternative acceptable qualifications is substantially similar to the language CBOE is proposing to delete from Interpretation and Policy .05.<sup>8</sup>

Specifically, CBOE is proposing to permit the General Securities Representative (GS) registration (Series 7) to serve as an acceptable alternative qualification to obtain the Proprietary Trader (PT) registration.<sup>9</sup> Similarly, CBOE is proposing to permit the General Securities Sales Supervisor (SU) registration (Series 9/10) and the General Securities Principal—Sales Supervisor Module registration (Series 23) to collectively serve as an alternative acceptable qualification to obtain the Proprietary Trader Principal (TP)

<sup>8</sup> See Securities Exchange Act Release No. 65147 (August 17, 2011), 76 FR 52722 (August 23, 2011) (SR-CBOE-2011-075). See also Footnote 5.

<sup>9</sup> The current Interpretation and Policy .05 provides that the Series 7 would be permitted as an acceptable substitute qualification examination for the Proprietary Trader (PT) registration category through December 31, 2011. CBOE is proposing to delete the reference to the December 31, 2011 deadline as part of the proposed deletions to Interpretation and Policy .05 to Rule 3.6A. As noted above, CBOE is proposing to codify that the General Securities Representative (GS) registration (Series 7) will be permitted as an acceptable alternative qualification to obtain the Proprietary Trader (PT) registration category. While CBOE believes the Series 56 is a more applicable exam for those individuals engaged in proprietary trading, market-making and/or effecting transactions for broker-dealers, CBOE proposes to accept the General Securities Representative (GS) registration (Series 7) as an acceptable alternative qualification because the other applicable self-regulatory organizations permit individuals who maintain that registration to qualify for a Proprietary Trader (PT) registration and/or require the General Securities Representative (GS) registration (Series 7) to serve as the appropriate category of registration for proprietary traders. See, for example, NASD Rule 1032 [sic] and NASDAQ OMX PHLX Rule 604.

registration. In addition, CBOE is proposing to permit the General Securities Principal (GP) registration (Series 24) or the Proprietary Trader Principal (TP) registration to serve as an alternative acceptable qualification to obtain the Proprietary Trader Compliance Officer (CT) registration. As noted above, the alternative qualifications for the Proprietary Trader Principal (TP) and Proprietary Trader Compliance Officer (CT) are currently acceptable under Interpretation and Policy .05 to Rule 3.6A. CBOE is proposing to incorporate this language into Interpretation and Policy .08 and remove it from Interpretation and Policy .05, as an individual maintaining these qualifications is not required to request a waiver from the Exchange, and Interpretation and Policy .05 relates to waiver requests.

Rule 3.6A(e) provides that “any person whose registration has been revoked by the Exchange as a disciplinary sanction or whose most recent registration has been terminated for two or more years immediately preceding the date of receipt by the Exchange of a new application shall be required to pass a qualification examination appropriate to the category of registration \* \* \*” It should be noted that an individual Trading Permit Holder or individual associated person who has been registered in a category of registration that is considered an alternative acceptable qualification within the previous two years (and whose registration has not been revoked as a disciplinary sanction) shall meet the alternative acceptable qualification requirements for purposes of registering as a Proprietary Trader (PT), Proprietary Trader Principal (TP) or a Proprietary Trader Compliance Officer (CT). For example, an individual whose previous registration as a General Securities Representative (GS) terminated on December 31, 2011 may rely on that registration as an alternative acceptable qualification to obtain the Proprietary Trader (PT) registration upon employment as a proprietary trader of a Trading Permit Holder at any time within the two year period ending December 31, 2013.

CBOE is also proposing to adopt Interpretation and Policy .09 to Rule 3.6A to state explicitly that any individual qualifying for a registration category pursuant to Rule 3.6A must satisfy all registration and qualification requirements prior to becoming engaged in the securities business of a Trading Permit Holder or, as applicable, prior to acting in a capacity on behalf of a Trading Permit Holder or TPH organization requiring such registration.

<sup>6</sup> See Securities Exchange Act Release No. 63314 (November 12, 2010), 75 FR 70957 (November 19, 2010) (SR-CBOE-2010-084).

<sup>7</sup> See CBOE Regulatory Circular RG11-077 (issued June 28, 2011).

While the requirement exists today, CBOE is proposing to add this language to ensure that Trading Permit Holders and applicable associated persons are reminded of their obligation to register and qualify all applicable associated persons prior to engaging in the securities business of the Trading Permit Holder or, as applicable, prior to acting in a capacity on behalf of a Trading Permit Holder or TPH organization requiring such registration. For example, if an existing employee who currently conducts a public customer business on behalf of the Trading Permit Holder (and thus, maintains the General Securities Representative (GS) registration) wishes to engage in proprietary trading, that individual must be approved in WebCRD in the Proprietary Trader (PT) registration category prior to acting in the capacity of a proprietary trader on behalf of the Trading Permit Holder or TPH organization.

Lastly, CBOE is proposing to clarify Interpretation and Policy .07 to Rule 3.6A to (i) state explicitly that individuals who fall into one of the categories referenced in Interpretation and Policy .07 to Rule 3.6A are subject to heightened qualification requirements<sup>10</sup> and (ii) clarify that a Trading Permit Holder that conducts only proprietary trading and has 25 or fewer registered persons shall be required to have a *minimum* of one officer or partner who is registered in this capacity. Exchange staff has received multiple questions regarding whether a Trading Permit Holder that conducts proprietary trading only and that has 25 or fewer registered persons is required only to have one officer or partner who is registered as a Proprietary Trader Principal (PT). This is not a proper interpretation of the requirement. The approval order for SR-CBOE-2010-084 provides, in relevant part, "all individuals who engage in supervisory functions at the TPH organization's securities business, or who oversee associated persons of TPHs, must register and pass the relevant principal examination."<sup>11</sup> The Exchange is not proposing to impose any additional obligations on Trading Permit Holders or TPH organizations but rather is clarifying this language in

<sup>10</sup> Proposed Interpretation and Policy .08 to Rule 3.6A provides that individuals who fall into the categories set forth in Interpretation and Policy .07 to Rule 3.6A are required to register and qualify as a Proprietary Trader Principal (TP).

<sup>11</sup> See Securities Exchange Act Release No. 63314 (November 12, 2010), 75 FR 70957 (November 19, 2010) (SR-CBOE-2010-084).

response to questions received relating to this provision.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(c) of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(c)(3)<sup>13</sup> of the Act, which authorizes CBOE to prescribe standards of training, experience and competence for persons associated with CBOE and CBSX Trading Permit Holders, in that the proposed rule codifies the existing registration and qualification requirements (including alternative acceptable qualifications) for CBOE and CBSX Trading Permit Holders and TPH organizations. In addition, the proposed rule change is consistent with Section 6(c)(3) of the Act<sup>14</sup> in that CBOE is proposing to permit the General Securities Representative (GS) registration (Series 7) to serve as an alternative acceptable qualification to register as a Proprietary Trader (PT). The additional changes to the rule text are clarifying changes and do not impose any additional obligations on Trading Permit Holders or their associated persons. CBOE believes the proposed changes are reasonable and set forth the appropriate qualifications for an individual Trading Permit Holder and individual associated person who is required to register under Exchange Rule 3.6A, including, but not limited to, Market-Makers, proprietary traders and individuals effecting transactions on behalf of other broker-dealers.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

### *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 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

<sup>12</sup> 15 U.S.C. 78f(c).

<sup>13</sup> 15 U.S.C. 78f(c)(3).

<sup>14</sup> 15 U.S.C. 78f(c)(3).

which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

The Commission believes it is consistent with the public interest to waive the 30-day operative delay. Waiver of the operative delay will allow associated persons of CBOE firms who have passed examinations deemed acceptable by the Commission to register in the appropriate category and operate on CBOE without undue delay. Furthermore, it will provide additional clarity to CBOE's rules that a Trading Permit Holder that conducts only proprietary trading and has 25 or fewer registered persons is required to have a minimum of one officer or partner who is registered as a Proprietary Trader Principal (PT) but *shall* register *all* persons with certain functions as PTs.

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

## IV. Solicitation of Comments

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

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2012-039 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

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

<sup>16</sup> 17 C.F.R. [sic] 240.19b-4(f)(6).

All submissions should refer to File Number SR-CBOE-2012-039. 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 CBOE. 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-CBOE-2012-039 and should be submitted on or before June 12, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67001; File No. SR-NYSEArca-2012-21]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of the First Trust North American Infrastructure Fund Under NYSE Arca Equities Rule 8.600

May 16, 2012.

#### I. Introduction

On March 13, 2012, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed

with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the First Trust North American Infrastructure Fund ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on April 3, 2012.<sup>3</sup> The Commission received no comments on the proposed rule change. On May 16, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>4</sup> This order grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

#### II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by First Trust Exchange-Traded Fund IV ("Trust"),<sup>5</sup> which is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company. The investment adviser to the Fund will be First Trust Advisors L.P. ("Adviser" or "First Trust"). Energy Income Partners LLC will serve as investment sub-adviser to the Fund ("Sub-Adviser") and provide day-to-day portfolio management of the Fund. First Trust Portfolios L.P. will be the principal underwriter and distributor of the Fund's Shares. Bank of New York Mellon will serve as administrator,

custodian, and transfer agent for the Fund. The Exchange states that the Adviser and Sub-Adviser are each affiliated with a broker-dealer and, as such, represents that each of the Adviser and Sub-Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio.<sup>6</sup>

#### *First Trust North American Infrastructure Fund*

The Fund's investment objective is to seek total return with an emphasis on current distributions and dividends paid to shareholders. Under normal market conditions,<sup>7</sup> the Fund will invest at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in exchange-traded equity securities of companies domiciled in the United States or Canada and deemed to be engaged in the energy infrastructure segment of the energy and utilities sectors. Equity securities include common stocks; preferred securities; warrants to purchase common stocks or preferred securities; securities convertible into common stocks or preferred securities; and other securities with equity characteristics. Such securities may include depositary receipts, master limited partnerships ("MLPs"), MLP I-shares ("I-Shares") (as described below), MLP subordinated units (as described below), securities of pipeline and power utility companies, and securities of Canadian energy infrastructure companies and Canadian Energy Infrastructure Trusts<sup>8</sup> ("CEITs"). The

<sup>6</sup> See NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

<sup>7</sup> The term "under normal market conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

<sup>8</sup> CEITs are Canadian trusts that own or invest in companies engaged in activities in the energy infrastructure sector, including the exploration, mining, production, processing, transportation and storage of energy-related resources. An investment in units of CEITs involves risks which differ from an investment in common stock of a corporation. CEITs generally pass revenue on to unit holders rather than reinvesting in the business, which may lead to the sacrifice of potential growth. CEITs

Continued

<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. 66669 (March 28, 2012), 77 FR 20079 ("Notice").

<sup>4</sup> In Amendment No. 1, the Exchange proposes to remove references to the Exemptive Order (as defined herein) to clarify that the percentage limitations with respect to the Fund's investments in certain derivative instruments are to be imposed by the Fund, and are not specifically imposed under the Exemptive Order. This technical amendment does not require notice and comment as it did not materially affect the substance of the proposed rule change or raise any unique or novel regulatory issues.

<sup>5</sup> The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). On July 19, 2011, the Trust filed with the Commission a registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act") and under the 1940 Act relating to the Fund (File Nos. 333-174332 and 811-22559) ("Registration Statement"). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 28468 (October 27, 2008) (File No. 812-13477) ("Exemptive Order").

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