(2) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve or disapprove such proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be 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.* Please include File Number SR–ISE–2013–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2013–14. 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 available publicly. All submissions should refer to File Number SR–ISE–2013–14 and should be submitted on or before March 21, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–04615 Filed 2–27–13; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68972; File No. SR–NASDAQ–2012–147]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of the Shares of the First Trust High Yield Long/Short ETF of First Trust Exchange-Traded Fund IV

February 22, 2013.

I. Introduction

On December 21, 2012, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the shares ("Shares") of the First Trust High Yield Long/Short ETF ("Fund") of First Trust Exchange-Traded Fund IV ("Trust") under Nasdaq Rule 5735. The proposed rule change was published for comment in the **Federal Register** on January 10, 2013.[3] The Commission received no comments on the proposal. On February 20, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.[4] This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund will be an actively managed exchange-traded fund ("ETF"). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on September 15, 2010.[5] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A with the Commission.[6]

First Trust Advisors L.P. is the investment adviser ("Adviser") to the Fund. First Trust Portfolios L.P. ("Distributor") is the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon Corporation will act as the administrator, accounting agent, custodian, and transfer agent to the Fund. The Adviser is affiliated with the Distributor, a broker-dealer. The Exchange represents that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate.[7]

First Trust High Yield Long/Short ETF

The Fund's primary investment objective is to provide current income. The Fund's secondary investment objective is capital appreciation. The Fund will pursue its objectives by seeking to invest in a broadly diversified portfolio composed principally of high-yield debt securities.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68581 (January 4, 2013), 78 FR 2295 ("Notice").

[4] In Amendment No. 1, the Exchange made a number of technical changes to the proposed rule change. In addition, the Exchange clarified that the pooled investment vehicles in which the Fund may invest would be exchange-traded. Because the changes made by Amendment No. 1 are technical in nature and do not materially alter the substance of the proposed rule change, and do not raise any novel or unique regulatory issues, Amendment No. 1 is not subject to notice and comment.

[5] The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 ("1940 Act"). *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795) ("Exemptive Order"). In compliance with Nasdaq Rule 5735(b)(5), which applies to Managed Fund Shares based on a fixed income portfolio (including without limitation exchange-traded notes and senior loans) or a portfolio invested in a combination of equity securities and fixed income securities, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

[6] *See* Post-Effective Amendment No. 6 to Registration Statement on Form N–1A for the Trust, dated October 11, 2012 (File Nos. 333–174332 and 811–22559) ("Registration Statement").

[7] *See* Nasdaq Rule 5735(g). The Exchange represents that, in the event (a) the 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. In addition, Nasdaq Rule 5735(g) requires that Adviser personnel who make decisions regarding the Fund's portfolio be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.

The Adviser will combine a fundamental credit selection process with top down relative value analysis when selecting investment opportunities. The Adviser believes that an evolving investment environment offers varying degrees of investment risk opportunities in the high-yield, bank loan, and fixed-income instrument markets. In order to capitalize on investments and effectively manage potential risk, the Adviser believes that the combination of thorough and continuous credit risk analysis, market evaluation, diversification, and the ability to reallocate investments is critical to achieving higher risk-adjusted returns.

Primary Investments

The Fund, under normal market conditions,[8] will invest at least 80% of its net assets (plus the amount of any borrowing for investment purposes) in high-yield debt securities that are rated below investment grade at the time of purchase, commonly referred to as ''junk'' bonds, or unrated securities deemed by the Adviser to be of comparable quality. Such securities may include U.S. and non-U.S. corporate debt obligations, bank loans, and convertible bonds. For purposes of determining whether a security is below investment grade, the lowest available rating will be considered. At least 75% of the Fund's net assets invested in high-yield debt securities will be invested in issuers that have a minimum principal amount outstanding of $100 million or more with respect to U.S. corporate issuers and $200 million or more with respect to non-U.S. corporate issuers, and the portfolio, once fully invested, will include a minimum of 13 non-affiliated issuers.[9]

High-yield debt may be issued by companies without long track records of sales and earnings, or by issuers that have questionable credit strength. High-yield debt and comparable unrated debt securities: (a) Will likely have some quality and protective characteristics that, in the judgment of the rating agency evaluating the instrument, are outweighed by large uncertainties or major risk exposures to adverse conditions; and (b) are predominantly speculative with respect to the issuer's capacity to pay dividends or interest and repay principal in accordance with the terms of the obligation. Many below-investment-grade debt securities are subject to legal or contractual restrictions limiting the Fund's ability to resell the securities to the general public.

The Fund may invest in corporate debt securities issued by U.S. and non-U.S. companies of all kinds, including those with small, mid, and large capitalizations. Notes, bonds, debentures, and commercial paper are the most common types of corporate debt securities, with the primary difference being their maturities and secured or unsecured status. Corporate debt may carry fixed or floating rates of interest.

The Fund may invest up to 15% of its net assets in bank loans, which may also include loan interests that are not secured by any specific collateral of the borrower, loan interests that have a lower than first-lien priority on collateral of the borrower, loans to foreign borrowers, loans in foreign currencies, and other loans with characteristics that the Adviser believes qualify as bank loans. The Fund may invest in such loans by purchasing assignments or all or a portion of loans or loan participations from third parties. These loans are made by or issued to corporations primarily to finance acquisitions, refinance existing debt, support organic growth, or pay out dividends, and are typically originated by large banks and are then syndicated out to institutional investors as well as to other banks. Bank loans typically bear interest at a floating rate although some loans pay a fixed rate. Due to their subordination in the borrower's capital structure, unsecured and/or subordinated loans involve a higher degree of overall risk than senior bank loans of the same borrower. Unfunded contracts are commitments by lenders to loan an amount in the future or that is due to be contractually funded in the future. The Fund will invest 85% or more of the portfolio in securities that the Adviser deems to be sufficiently liquid at the time of investment.

The Fund may invest in non-income-producing securities, including defaulted securities and common stocks[10] and companies whose financial condition is troubled or uncertain and that may be involved in bankruptcy proceedings, reorganizations, or financial restructurings. The Fund may also invest in investment-grade[11] debt securities. The Fund does not have any portfolio maturity limitation and may invest its assets in securities with short-term, medium-term, or long-term maturities. The Fund will not invest more than 15% of the portfolio in such distressed securities, as determined at the time of the investment.

Non-U.S. debt securities in which the Fund may invest include debt securities issued or guaranteed by companies organized under the laws of countries other than the United States (including emerging markets), debt securities issued or guaranteed by foreign, national, provincial, state, municipal, or other governments with taxing authority or by their agencies or instrumentalities, and debt obligations of supranational governmental entities such as the World Bank or European Union. These debt securities may be U.S. dollar-denominated or non-U.S. dollar-denominated. Non-U.S. debt securities also include U.S. dollar-denominated debt obligations, such as ''Yankee Dollar'' obligations, of foreign issuers and of supranational government entities. Yankee Dollar obligations are U.S. dollar-denominated obligations issued in the U.S. capital markets by foreign corporations, banks, and governments. Foreign debt securities also may be traded on foreign securities exchanges or in over-the-counter capital markets. Under normal market conditions, up to 10% of the net assets of the Fund's investment in foreign securities may be denominated in currencies other than the U.S. dollar. To the extent the Fund invests in such instruments, the value of the assets of the Fund as measured in U.S. dollars will be affected by changes in exchange rates.

The Fund may invest in preferred securities and convertible securities. Preferred securities, which generally pay fixed or adjustable-rate dividends or interest to investors, have preference over common stock in the payment of dividends or interest and the liquidation of a company's assets, which means that

8 The term ''under normal market conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income 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.

9 If a downgrade occurs, the Adviser will consider what action, including the sale of such security, is in the best interest of the Fund and its shareholders.

10 The equity securities in which the Fund may invest (including any that have converted from convertible debt) will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.

11 According to the Adviser, ''investment grade'' means securities rated in the Baa/BBB categories or above by one or more nationally recognized securities rating organizations (''NRSROs''). If a security is rated by multiple NRSROs and receives different ratings, the Fund will treat the security as being rated in the highest rating category received from an NRSRO. Rating categories may include sub-categories or gradations indicating relative standing.

a company typically must pay dividends or interest on its preferred securities before paying any dividends on its common stock. Preferred securities are generally junior to all forms of the company's debt, including both senior and subordinated debt.

As part of its investment strategy, the Fund intends to maintain both long and short positions in securities under normal market conditions. The Fund will take long positions in securities that the Adviser believes in the aggregate to have the potential to outperform the Fund's benchmark, the Bank of America Merrill Lynch U.S. High Yield Master II Constrained Index (''Index''). The Fund's long positions may total up to 130% of the Fund's Managed Assets. ''Managed Assets'' means the average daily gross asset value of the Fund (which includes the principal amount of any borrowings), minus the sum of the Fund's liabilities. The Fund will take short positions in securities that the Adviser believes in the aggregate will underperform the Index. These securities may consist of securities included in the Index or other securities, including U.S. Treasury securities and/or corporate debt obligations that may be rated investment grade or non-investment grade, which the Adviser believes in the aggregate will underperform the Index. The Fund's short positions may total up to 30% of the Fund's Managed Assets. A ''short sale'' is a transaction in which the Fund sells a security that it does not own (and borrows the security to deliver it to the buyer) in anticipation that the market price of the security will decline. The proceeds received from the Fund's short sales of securities will generally be used to purchase all or a portion of the Fund's additional long positions in securities.

The Fund will use short sales for investment and risk management purposes, including when the Adviser anticipates that the market price of securities will decline or will underperform the Index in the aggregate. Short selling allows the Fund to profit from a decline in market price to the extent such decline exceeds the transaction costs and the costs of borrowing the securities. In times of unusual or adverse market, economic, regulatory, or political conditions, the Fund may not be able, fully or partially, to implement its short-selling strategy. If a security sold short increases in price, the Fund may have to cover its short position at a higher price than the short sale price, resulting in a loss. The Fund will have substantial short positions and must borrow those securities to make delivery to the buyer.

Other Investments

The Fund may invest in U.S. government securities. U.S. government securities include U.S. Treasury obligations and securities issued or guaranteed by various agencies of the U.S. government, or by various instrumentalities which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the ''full faith and credit'' of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

The Fund may invest in U.S. agency mortgage-backed securities and collateralized mortgage securities issued by the Government National Mortgage Association, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

Under normal market conditions, the Fund may invest up to 10% of its net assets in short-term debt securities and other cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings will vary and will depend on several factors, including market conditions. For temporary defensive purposes and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies and invest part or all of its assets in short-term debt securities or cash equivalents or it may hold cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the portfolio managers believe securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

Short-term debt securities are securities from issuers having a long-term debt rating of at least A by Standard & Poor's Ratings Group (''S&P Ratings''), Moody's Investors Service, Inc. (''Moody's''), or Fitch, Inc. (''Fitch'') and having a maturity of one year or less. The use of temporary investments is not a part of a principal investment strategy of the Fund.

Short-term debt securities are defined to include, without limitation, the following: (1) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements,[12] which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and (6) commercial paper, which are short-term unsecured promissory notes, including variable rate master demand notes issued by corporations to finance their current operations. The Fund may only invest in commercial paper rated A–2 or higher by S&P Ratings, Prime-2 or higher by Moody's, or F2 or higher by Fitch.

The Fund intends to hedge its non-U.S. dollar holdings. Generally, the Fund's currency exchange transactions will be conducted on a spot (*i.e.,* cash) basis at the spot rate prevailing in the currency exchange market. The cost of the Fund's currency exchange transactions will generally be the difference between the bid and offer spot rate of the currency being purchased or sold. In order to protect against uncertainty in the level of future currency exchange rates, the Fund is authorized to enter into various currency exchange transactions.

The Fund may invest up to 10% of its net assets in securities of other open-end or closed-end investment companies, including ETFs [13] that invest primarily in securities of the types in which the Fund may invest directly. In addition, the Fund may invest a portion of its assets in exchange-traded pooled investment vehicles (other than investment companies) that invest primarily in securities of the types in which the Fund may invest directly. The Fund

[12] The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Board. The Adviser will review and monitor the creditworthiness of such institutions. The Adviser will monitor the value of the collateral at the time the action is entered into and at all times during the term of the repurchase agreement.

[13] An ETF is an investment company registered under the 1940 Act that holds a portfolio of securities generally designed to track the performance of a securities index, including industry, sector, country, and region indexes. Such ETFs all will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by such ETFs and their sponsors from the Commission. The ETFs in which the Fund may invest include Index Fund Shares and Portfolio Depositary Receipts (as described in NASDAQ Rule 5705); and Managed Fund Shares (as described in Nasdaq Rule 5735). While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.,* 2X or 3X) ETFs.

may invest in other investment companies to the extent permitted by the 1940 Act.

The Fund may receive equity, warrants, corporate bonds, and other such securities as a result of the restructuring of the debt of an issuer, reorganization of a bank loan or bond, or as part of a package of securities acquired together with a high-yield bond or senior loan(s) of an issuer. Such investments will be subject to the Fund's investment objectives, restrictions, and strategies as described herein.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including variable rate master demand notes and 144A securities from issues with less than $100 million original principal amount outstanding. The Fund will monitor its portfolio liquidity on an ongoing basis 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 securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or securities of other investment companies. In addition, the Fund may not, as to 75% of its total assets, (a) invest more than 5% of the value of its total assets in the securities of any one issuer or (b) hold more than 10% of the outstanding voting securities of that issuer (other than securities of other investment companies and obligations issued or guaranteed by the U.S. government or any agency or instrumentality thereof).

Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements. The Fund's investments will be consistent with the investment objectives and strategies described in the Registration Statement. The Fund will not invest to enhance leverage. The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

Additional information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, availability of Fund values and other information, and distributions and taxes, among other things, can be found in the Notice and/or Registration Statement, as applicable.[14]

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[15] and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the Exchange's rules be 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 Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[18] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via UTP Level 1, as well as Nasdaq proprietary quote and trade services. On each business day, before commencement of trading in Shares in the Regular Market Session[19] on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (''Disclosed Portfolio'') held by the Fund that will form the basis for the Fund's calculation of net asset value (''NAV'') at the end of the business day.[20] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m. Eastern time.[21] Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,[22] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session. During hours when the markets for local debt in the Fund's portfolio are closed, the Intraday Indicative Value will be updated at least every 15 seconds during the Regular Market Session to reflect currency exchange fluctuations.

In addition, 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, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Intra-day, executable price quotations of the fixed-income securities and other assets held by the Fund are available from major broker-dealer firms or on the exchange on which they are traded, if applicable. Intra-day price information is also available through subscription services,

[14] *See supra* notes 3 and 6 and respective accompanying text.

[15] 15 U.S.C. 78f.

[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[19] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 7:00 a.m. to 9:30 a.m.; (2) Regular Market Session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m.; and (3) Post-Market Session from 4:00 p.m. or 4:15 p.m. to 8:00 p.m.).

[20] The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting, and market value of fixed-income securities and other assets held by the Fund and the characteristics of such assets. The Web site and information will be publicly available at no charge.

[21] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund 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.

[22] Currently, the NASDAQ OMX Global Index Data Service (''GIDS'') is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors. The Web site for the Fund will include a form of the prospectus for the Fund, additional data relating to NAV, and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes 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, the Exchange will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121. Trading 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 Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange will consider the suspension of trading in or removal from listing of the Shares if the Intraday Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time.[23] The Exchange states that the Adviser is affiliated with the Distributor, a broker-dealer. The Exchange represents that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate.[24] The Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[25] The Exchange states that trading of the Shares through Nasdaq will be subject to FINRA's surveillance procedures for derivative products, including Managed Fund Shares.[26] The Exchange may obtain information via the ISG from other exchanges who are members or affiliates of the ISG. Further, the Exchange states that it prohibits the distribution of material, non-public information by its employees.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares on Nasdaq during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

(4) Prior to the commencement of trading, 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: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.[27]

(6) At least 75% of the Fund's net assets invested in high yield debt securities will be invested in issuers that have a minimum principal amount outstanding of $100 million or more with respect to U.S. corporate issuers and $200 million or more with respect to non-U.S. corporate issuers, and the portfolio, once fully invested, will include a minimum of 13 non-affiliated issuers.

(7) The Fund will invest 85% or more of the portfolio in securities that the Adviser deems to be sufficiently liquid at the time of investment. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including: (a) Rule 144A securities with less than $100 million original principal amount outstanding; and (b) variable rate master demand notes. The Fund will monitor its portfolio liquidity on an ongoing basis 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 securities.

(8) The Fund will not invest more than 15% of the portfolio in distressed securities, as described herein, as determined at the time of the investment.

(9) The equity securities in which the Fund may invest (including any that have converted from convertible debt) will be limited to securities that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a

[23] *See* Nasdaq Rule 5735(d)(2)(C)(ii).

[24] *See* Nasdaq Rule 5735(g), *supra* note 6 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the 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.

[25] *See* Nasdaq Rule 5735(d)(2)(B)(ii).

[26] The Exchange states that FINRA surveils trading on Nasdaq pursuant to a regulatory services agreement and that it is responsible for FINRA's performance under this regulatory services agreement.

[27] *See* 17 CFR 240.10A–3.

comprehensive surveillance sharing agreement with the Exchange.

(10) Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements. The Fund's investments will be consistent with the investment objectives and strategies described in the Registration Statement. The Fund will not invest to enhance leverage.

(11) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [28] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NASDAQ–2012–147), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Kevin M. O'Neill,

Deputy Secretary.

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[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68973; File No. SR–NYSEArca–2012–66]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendments No. 1 and No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendments No. 1 and No. 2 To List and Trade Shares of the iShares Copper Trust Pursuant to NYSE Arca Equities Rule 8.201

February 22, 2013.

I. Introduction

On June 19, 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'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the iShares Copper Trust (''Trust'' or ''iShares Trust'') pursuant to NYSE Arca Equities Rule 8.201. BlackRock Asset Management International Inc. is the sponsor of the Trust (''Sponsor''). The proposed rule change was published for comment in the **Federal Register** on June 27, 2012.[3]

The Commission initially received one comment letter, which opposed the proposed rule change.[4] On August 8, 2012, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[5] Subsequently, the Commission received additional comments on the proposed rule change.[6]

On December 12, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.[7] On December 21, 2012, the Commission designated February 22, 2013, as the date by which the Commission should either approve or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 67237 (June 22, 2012), 77 FR 38351 (''Notice'').

[4] *See* letter from Robert B. Bernstein, Vandenberg & Feliu, LLP (''V&F''), to Elizabeth M. Murphy, Secretary, Commission, dated July 18, 2012 (''V&F July 18 Letter''). Comment letters are available at *http://www.sec.gov/comments/sr-nysearca-2012-66/nysearca201266.shtml.* This commenter states that he represents RK Capital LLC, an international copper merchant, and four end-users of copper: Southwire Company, Encore Wire Corporation, Luvata, and AmRod Corp (collectively, the ''Copper Fabricators''). The commenter states that these companies collectively comprise about 50% of the copper fabricating capacity in the United States. *See* V&F July 18 Letter, *supra,* at 1.

[5] *See* Securities Exchange Act Release No. 67616, 77 FR 48181 (August 13, 2012) (''Order Instituting Proceedings'').

[6] *See* letters from Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated September 12, 2012 (''V&F September 12 Letter''); Ira P. Shapiro, Managing Director, and Deepa A. Damre, Director, Legal and Compliance, BlackRock, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated September 12, 2012 (''BlackRock Letter''); Janet McGinness, General Counsel, NYSE Markets, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated September 14, 2012 (''Arca September 14 Letter''); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated September 27, 2012 (''V&F September 27 Letter''); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated November 16, 2012 (''V&F November 16 Letter''); Robert B. Bernstein, Partner, Eaton & Van Winkle LLP (''EVW''), to Elizabeth M. Murphy, Secretary, Commission, dated December 7, 2012 (''EVW December 7 Letter''); and email from Janet Klein dated January 7, 2013 (''Klein Email'').

In the V&F September 27 Letter, the commenter incorporated by reference all of his prior comments in opposition to NYSE Arca's proposal to list and trade shares of the JPM XF Physical Copper Trust (''JPM Copper Trust'') (File No. SR–NYSEArca–2012–28). *See* V&F September 27 Letter, *supra,* at 6. Responding to that proposed rule change, the commenter submitted the following: Letters from V&F, received May 9, 2012 (''V&F May 9 Letter''); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated July 13, 2012 (''V&F July 13 Letter''); Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated August 24, 2012 (''V&F August 24 Letter''); and Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated September 10, 2012 (''V&F September 10 Letter''). The comment letters the commenter incorporated by reference are available at *http://www.sec.gov/comments/sr-nysearca-2012-66/nysearca201266.shtml.* Additionally, the commenter stated that he agrees with the arguments against that proposal set forth in a letter from U.S. Senator Carl Levin, to Elizabeth M. Murphy, Secretary, Commission, dated July 16, 2012 (''Levin Letter''), and attached the Levin Letter to the V&F July 18 Letter. *See* V&F July 18 Letter, *supra,* at 5. The Commission approved NYSE Arca's proposal to list and trade shares of the JPM Copper Trust on December 14, 2012, in an order that addressed these and other comments. *See* Securities Exchange Act Release No. 68440 (December 14, 2012), 77 FR 75468, 75473–86 (December 20, 2012) (SR–NYSEArca–2012–28) (''JPM Order'').

In the V&F September 12 Letter, the commenter requested to make an oral presentation in the proceeding. The Commission denied the commenter's request. *See* letter from Kevin M. O'Neill, Deputy Secretary, Commission, to Robert B. Bernstein, EVW, dated December 5, 2012, *available at http://www.sec.gov/comments/sr-nysearca-2012-66/nysearca201266.shtml.* By letter dated November 29, 2012, Mr. Bernstein informed the Commission that he had left V&F and would continue to represent the Copper Fabricators and RK Capital LLC in this proceeding.

[7] In Amendment No. 1, the Exchange represented that it: (1) Has obtained representations from the Sponsor that the Sponsor is affiliated with one or more broker-dealers and other entities, that the Sponsor will implement a fire wall with respect to such affiliate(s) prohibiting access to material non-public information of the Trust concerning the Trust and the Shares, and that the Sponsor and such affiliate(s) will be subject to procedures designed to prevent the use and dissemination of material non-public information of the Trust regarding the Trust and the Shares; and (2) can obtain information regarding the activities of the Sponsor and its affiliates under the Exchange's listing rules. Additionally, the Exchange supplemented its description of surveillance applicable to the Shares contained in the proposed rule change as originally filed. Specifically, the Exchange represented that trading in the Shares would be subject to the existing trading surveillances, administered by Financial Industry Regulatory Authority, Inc. (''FINRA'') on behalf of the Exchange, and that, in addition, FINRA would augment those existing surveillances with a review specific to the Shares that is designed to identify potential manipulative trading activity through use of the creation and redemption process. The Exchange represented that all those procedures would be operational at the commencement of trading in the Shares on the Exchange and that, on an ongoing basis, NYSE Regulation, Inc. (on behalf of the Exchange) and FINRA would regularly monitor the continued operation of those procedures. In addition, the Exchange has represented that it will communicate as needed regarding trading in the Shares with other markets that are members of Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement. On December 13, 2012, the Exchange submitted a comment letter attaching Amendment No. 1. *See* letter from Janet McGinness, General Counsel, NYSE Markets, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated December 13, 2012.