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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [14] of the Act and subparagraph (f)(2) of Rule 19b–4 [15] thereunder, because it establishes a due, fee, or other charge imposed by NYSE MKT.

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [16] of the Act 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.* Please include File Number SR–NYSEMKT–2013–71 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–NYSEMKT–2013–71. 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–NYSEMKT–2013–71 and should be submitted on or before September 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–21572 Filed 9–4–13; 8:45 am]

**BILLING CODE 8011–01–P**

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70282; File No. SR–NYSEArca–2013–70]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change To List and Trade Shares of First Trust Inflation Managed Fund

August 29, 2013.

### I. Introduction

On July 8, 2013, 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'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the First Trust Inflation Managed Fund (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on July 25, 2013.[3] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

### 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''), which is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company.[4] The investment adviser to the Fund will be First Trust Advisors L.P. (''Adviser'' or ''First Trust''). First Trust Portfolios L.P. will be the principal underwriter and distributor of the Fund's Shares. Bank of New York Mellon (''BNY'') will serve as the administrator, custodian, and transfer agent for the Fund. The Exchange states that the Adviser is not a broker-dealer but is affiliated with a broker-dealer and 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.[5]

The Fund's primary investment objective will be to seek long-term capital appreciation, and its secondary investment objective will be to seek current income. The Fund will be an actively managed exchange-traded fund that will invest in: (1) Exchange-listed common stocks and other equity securities described below (including ''Depositary Receipts,'' as defined herein) of companies in the agriculture, energy, metals, and mining sectors; (2) exchange-traded products (''Underlying ETPs'') [6] that hold commodities, such as

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70008 (July 19, 2013), 78 FR 45003 (''Notice'').

[4] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On December 7, 2012, the Trust filed with the Commission an amendment to the Trust's registration statement on Form N–1A under the Securities Act of 1933 (''1933 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'').

[5] *See* NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate 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.

[6] The term ''Underlying ETPs'' includes Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary

gold and silver, or futures on such commodities; (3) debt securities and Underlying ETPs that invest in such securities; and (4) real estate interests, including other exchange-traded funds that invest in such interests.

The asset class allocation between equity securities, bonds, commodities, and real estate will be performed on a quarterly basis by First Trust. Changes to the asset allocation will be considered on a shorter time frame if market conditions warrant.[7] After the initial asset class allocation, the securities for each asset type will be selected as described below.

Equity Allocation

The Fund may invest in equity securities, which 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. The Fund also may invest in U.S. dollar-denominated foreign equity securities.[8]

Under normal market conditions,[9] the Fund will invest, in addition to common stocks, in U.S. dollar-denominated sponsored depositary receipts, which will include American Depositary Receipts (''ADRs''), Global Depositary Receipts (''GDRs''), European Depositary Receipts (''EDRs''), and American Depositary Shares (''ADSs'') (collectively ''Depositary Receipts''),[10] of agriculture, energy, metals, and mining companies.

The Adviser anticipates that the equities portion of the portfolio initially will represent 60% of the net assets of the Fund, although this percentage may vary over time.

An initial universe of inflation-related stocks will be created by selecting stocks of agricultural, energy, metals, and mining companies that trade on a U.S. stock exchange and have adequate liquidity for investment. The Fund's portfolio will be selected by examining the historical financial results of the securities from the initial universe. Companies that do not produce positive cash flow or companies with credit quality issues will be eliminated. The securities will then be evaluated by fundamental factors such as sales, earnings, and cash flow growth; valuation factors such as price/earnings, price/cash flow, price/sales, and price/book; and technical factors such as price momentum and earnings surprises. An estimated value will be calculated for each of the companies. The companies that currently trade at an attractive market price relative to their estimated value will be favored over companies that do not. The final portfolio will then be selected by the Adviser based on the security's fundamentals, valuation and technical factors, the security's relative valuation, and other qualitative factors such as competitive advantages, new products, and quality of management.

Bond Allocation

The Fund will invest in the types of bonds described below primarily through investing in Underlying ETPs that concentrate in these types of holdings. Bonds with fixed coupons during periods of rising inflation expectations may likely experience price depreciation due to the impact of rising interest rates. The negative effects of inflation on bonds may be offset through Underlying ETPs that invest in inflation-linked bonds. Inflation-linked government bonds, commonly known in the U.S. as Treasury Inflation-Protected Securities (''TIPS''), are securities issued by governments that are designed to provide inflation protection to investors. The coupon payments and principal value on these securities are adjusted according to inflation over the life of the bonds. The Underlying ETPs chosen to represent the bond portion of the portfolio will be reviewed for capitalization, liquidity, expenses, tracking error, and taxation structure factors. First Trust anticipates that the bond portion of the portfolio will initially represent approximately 20% of the net assets of the Fund, although this percentage may vary over time.

The Fund, through investments in Underlying ETPs, will invest primarily in investment grade debt securities with respect to the bond portion of its portfolio and may invest up to 15% of its net assets in high yield debt securities, including leveraged loans,[11] that are rated below investment grade at the time of purchase, or unrated securities deemed by the Fund's Adviser to be of comparable quality. ''Below investment grade'' is defined as those securities that have a long-term credit rating below ''BBB-'' by Standard & Poor's Rating Group, a division of McGraw Hill Companies, Inc. (''S&P''), or below ''Baa3'' by Moody's Investors Service, Inc. (''Moody's''), or comparably rated by another nationally recognized statistical rating organization.

The Fund, or the Underlying ETPs in which it may invest, may invest in a variety of debt securities, including corporate debt securities, U.S. government securities, and non-U.S. debt securities. Corporate debt securities are fixed-income securities issued by businesses to finance their operations. 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. Commercial paper has the shortest term and is usually unsecured. Certain debt securities held by the Fund may include debt instruments that have economic characteristics that are similar to preferred securities. Such debt instruments are typically issued by corporations, generally in the form of interest bearing notes, or by an affiliated business trust of a corporation, generally in the form of (i) beneficial interests in subordinated debentures or similarly structured securities or (ii) more senior debt securities that pay income and trade in a manner similar to preferred securities. Such debt instruments that have economic characteristics similar to preferred securities include trust preferred securities, hybrid trust

Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600); and closed-end funds. The Underlying ETPs all will be listed and traded in the U.S. on registered exchanges.

[7] Such market conditions could include periods of extreme volatility and force majeure events including, but not limited to, elements of nature or acts of God, earthquakes, strikes, riots, acts of war, terrorism, or other national emergencies.

[8] *See infra* note 10.

[9] 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.

[10] The equity securities, including Depositary Receipts, in which the Fund will invest will trade in markets that are members of the Intermarket Surveillance Group (''ISG'') or are parties to comprehensive surveillance sharing agreements with the Exchange.

[11] Under normal market conditions, the Fund may invest up to 15% of its net asset value (''NAV'') in leveraged loans, including senior secured bank loans, unsecured and/or subordinated bank loans, loan participations, and unfunded contracts. The Fund may invest in such loans by purchasing assignments of 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.

preferred securities, and senior notes/baby bonds.

The Fund will invest in Underlying ETPs that are designed to track government bond indexes, bank loan indexes, and floating rate security indexes.

Commodities Allocation

The Fund will invest in commodities through investing in Underlying ETPs that invest in commodities or futures on such commodities, such as gold, silver, and commodity indexes. In general, commodities have relatively high correlations with inflation, and the prices of real assets, such as gold, silver, oil, and copper, often rise along with increasing interest rates and inflation. Additionally, commodities normally move in the opposite direction of the U.S. dollar. First Trust anticipates that the commodities portion of the portfolio will represent 10% of the initial net assets of the Fund, although this percentage may vary over time.

Real Estate Allocation

The Fund will invest in U.S. exchange-listed securities of real estate investment trusts (''REITS''). In general, real estate prices have generated a correspondingly large increase in return and largely preserved the purchasing power of the original investment during periods of high inflation. The real estate portion of the portfolio will represent 10% of the initial net assets of the Fund, although this percentage may vary over time. The Fund also may invest in exchange-traded funds designed to track real estate indexes.

Other Investments

Normally, the Fund will invest substantially all of its assets in the securities allocations described above to meet its investment objectives. The Fund may invest the remainder of its assets in securities with maturities of less than one year or cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings may vary and 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 these securities or it may hold cash.[12] During such periods, the Fund may not be able to achieve its investment objectives. The Fund may adopt a defensive strategy when the portfolio manager believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

The Fund may invest up to 15% of its net assets in U.S. exchange-listed futures, interest rate swaps, total return swaps, non-U.S. currency swaps, credit default swaps,[13] U.S. exchange-listed options, forward contracts, and other derivative instruments in the aggregate to seek to enhance returns,[14] to hedge some of the risks of its investments in securities,[15] as a substitute for a position in the underlying asset, to reduce transaction costs, to maintain full market exposure in a given asset class, to manage cash flows, to limit exposure to losses due to changes to non-U.S. currency exchange rates, or to preserve capital.[16]

The Fund will only enter into transactions in derivative instruments with counterparties that First Trust reasonably believes are capable of performing under the contract[17] and will post as collateral at least $250,000 each day.

The Fund may invest in shares of money market funds to the extent permitted by the 1940 Act.

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.

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 Rule 144A securities deemed illiquid by the Adviser[18] and 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. 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 intends to qualify annually and to elect to be treated as a regulated investment company under the Internal Revenue Code.[19]

The Fund may invest up to 10% of its net assets in inverse Underlying ETPs, but it will not invest in leveraged or inverse leveraged Underlying ETPs.

The Fund's investments will be consistent with the Fund's investment objectives and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as

[12] The Fund may, without limit as to percentage of assets, purchase U.S. government securities or short-term debt securities to keep cash on hand fully invested or for temporary defensive purposes. Short-term debt securities are securities from issuers having a long-term debt rating of at least A by S&P, Moody's, or Fitch, Inc. (''Fitch'') and having a maturity of one year or less. The use of these temporary investments will not be 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, 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. Master demand notes are direct lending arrangements between the Fund and a corporation. The Fund may only invest in commercial paper rated A–1 or higher by S&P, Prime-1 or higher by Moody's, or F2 or higher by Fitch.

[13] To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house.

[14] For example, the Fund may sell exchange-listed covered calls on equity positions in the portfolio in order to enhance its income.

[15] The Fund may use derivative investments to hedge against interest rate and market risks. The Fund may engage in various interest rate and currency hedging transactions, including buying or selling U.S. exchange-listed options or entering into other transactions including forward contracts, fully collateralized swaps, and other derivatives transactions.

[16] The Fund will not enter into futures and options transactions if the sum of the initial margin deposits and premiums paid for unexpired options or futures exceeds 5% of the Fund's total assets.

[17] The Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser's Execution Committee will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser's analysts will evaluate each approved counterparty using various methods of analysis, including the counterparty's liquidity in the event of default, the broker-dealer's reputation, the Adviser's past experience with the broker-dealer, the Financial Industry Regulatory Authority's (''FINRA'') BrokerCheck and disciplinary history, and its share of market participation.

[18] In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[19] 26 U.S.C. 851.

permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's broad-based securities market index (as defined in Form N–1A) (*i.e.,* S&P 500).

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, is included in the Notice and Registration Statement, as applicable.[20]

## III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[21] and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[23] 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 NYSE Arca Equities Rule 8.600 for the Shares 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,[24] which sets forth Congress's 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 the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated every 15 seconds throughout the Exchange's Core Trading Session by one or more major market data vendors.[25] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.[26] The Fund's NAV will be determined as of the close of trading (normally 4:00 p.m. Eastern Time) on each day the New York Stock Exchange is open for business. A basket composition file, which will include the security names and share quantities required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange via the National Securities Clearing Corporation. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The intra-day, closing, and settlement prices of the portfolio securities will also be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The Fund's Web site will include a form of the prospectus for the Fund and 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.[27] In addition, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[28] Further, 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.[29] The Commission notes that the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange,[30] will communicate as needed regarding trading in the Shares, equity securities, futures contracts, and options contracts with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the

[20] *See* Notice and Registration Statement, *supra* notes 3 and 4, respectively.

[21] 15 U.S.C. 78f.

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

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[25] According to the Exchange, several major market data vendors widely disseminate Portfolio Indicative Values taken from the CTA or other data feeds. In addition, the Exchange represents that the price of a non-U.S. security that is primarily traded on a non-U.S. exchange will be updated, using the last sale price, every 15 seconds throughout the trading day, provided, that upon the closing of such non-U.S. exchange, the closing price of the security, after being converted to U.S. dollars, will be used. Further, in calculating the Portfolio Indicative Value of the Fund's Shares, exchange rates may be used throughout the Core Trading Session that may differ from those used to calculate the NAV per Share of the Fund and consequently may result in differences between the NAV and the Portfolio Indicative Value.

[26] On a daily basis, the Fund will disclose for each portfolio security and other financial instrument of the Fund the following information on the Fund's Web site: ticker symbol (if applicable); name of security and financial instrument; number of shares, if applicable, and dollar value of securities and financial instruments held in the portfolio; and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

[27] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[28] *See* NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[29] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii). In addition, the Adviser represents that the Trust, First Trust, and BNY will not disseminate non-public information concerning the Trust.

[30] The Exchange states that, while FINRA surveils trading on the Exchange pursuant to a regulatory services agreement, the Exchange is responsible for FINRA's performance under this regulatory services agreement.

Shares, equity securities, futures contracts, and options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, equity securities, futures contracts, and options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that the Adviser is not a broker-dealer but is affiliated with a broker-dealer, and the 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 portfolio.[31]

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 conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

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

(3) The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value will be disseminated; (e) the requirement that ETP Holders 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 will be in compliance with Rule 10A–3 under the Exchange Act,[32] as provided by NYSE Arca Equities Rule 5.3.

(6) The equity securities in which the Fund will invest, including Underlying ETPs, Depositary Receipts, REITs, common stocks, preferred securities, warrants, convertible securities, and U.S. dollar-denominated foreign securities, as well as certain derivatives such as options and futures contracts, will trade in markets that are ISG members or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(7) 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 Rule 144A securities deemed illiquid by the Adviser and master demand notes.

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

(9) The Fund's investments will be consistent with the Fund's investment objectives and will not be used to enhance leverage. The Fund may invest up to 10% of its net assets in inverse Underlying ETPs, but it will not invest in leveraged or inverse leveraged Underlying ETPs.

(10) The Fund will only enter into transactions in derivative instruments with counterparties that First Trust reasonably believes are capable of performing under the contract[33] and will post as collateral at least $250,000 each day. In addition, to the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.[34]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[35] 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,[36] that the proposed rule change (SR–NYSEArca–2013–70) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–21533 Filed 9–4–13; 8:45 am]

**BILLING CODE 8011–01–P**

[31] *See supra* note 5. 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 its 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.

[32] 17 CFR 240.10A–3.

[33] *See supra* note 17.

[34] The Commission notes that it does not regulate the market for futures in which the Fund plans to take positions. Limits on the positions that any person may take in futures may be directly set by the Commodity Futures Trading Commission or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

[35] 15 U.S.C. 78f(b)(5).

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–70287; File No. SR–NYSE–2013–60]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the New York Stock Exchange Price List To Provide for Fees for a 40 Gigabit Liquidity Center Network Connection in the Exchange Data Center

August 29, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the