

SES performance appraisal system and \$167,000 (level III of the Executive Schedule) for SES members who are not covered by a certified SES performance appraisal system.

The minimum rate of basic pay for the senior-level (SL) and scientific and professional (ST) rate range was increased by 1 percent (\$120,749 in 2014), which is the amount of the across-the-board GS increase. The applicable maximum rate of the SL/ST rate range is \$181,500 (level II of the Executive Schedule) for SL or ST employees who are covered by a certified SL/ST performance appraisal system and \$167,000 (level III of the Executive Schedule) for SL or ST employees who are not covered by a certified SL/ST performance appraisal system. Agencies with certified performance appraisal systems for SES members and employees in SL and ST positions also must apply a higher aggregate limitation on pay—up to the Vice President's salary (\$233,000 in 2014.)

Note: Section 741 of title VII of division E of the Consolidated Appropriations Act, 2014 (Pub. L. 113–76, January 17, 2014), froze pay rates for the Vice President and certain senior political appointees (including political appointees under the Executive Schedule and certain non-career SES members) at 2013 levels during calendar year 2014. The section 741 pay freeze does not affect the 2014 rates (or ranges) of pay officially established by Executive Order 13655. Rather, it temporarily bars covered officials from receiving pay increases based on the 2014 increases in those officially established rates (or ranges). For additional information on the 2014 pay freeze for certain senior political officials, see <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=5952>.

Executive Order 13655 provides that the rates of basic pay for administrative law judges (ALJs) under 5 U.S.C. 5372 are increased by 1 percent, rounded to the nearest \$100 in 2014. The rate of basic pay for AL–1 is \$157,100 (equivalent to the rate for level IV of the Executive Schedule). The rate of basic pay for AL–2 is \$153,300. The rates of basic pay for AL–3/A through 3/F range from \$104,900 to \$145,100.

The rates of basic pay for members of Contract Appeals Boards are calculated as a percentage of the rate for level IV of the Executive Schedule. (See 5 U.S.C. 5372a.) Therefore, these rates of basic pay are increased by 1 percent in 2014.

On November 1, 2013, OPM issued a memorandum on behalf of the President's Pay Agent (the Secretary of

Labor and the Directors of the Office of Management and Budget (OMB) and OPM) that continues GS locality payments for ALJs and certain other non-GS employee categories in 2014. By law, EX officials, SES members, employees in SL/ST positions, and employees in certain other equivalent pay systems are not authorized to receive locality payments. (Note: An exception applies to certain grandfathered SES, SL, and ST employees stationed in a nonforeign area on January 2, 2010.) The locality pay percentages continued for non-GS employees have not been increased in 2014. The memo is available at: <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2013/continuation-of-locality-payments-for-non-general-schedule-employees-nov-2013.pdf>.

On December 23, 2013, OPM issued a memorandum (CPM 2013–18) on the January 2014 pay adjustments. (See <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=5896>.) The memorandum transmitted Executive Order 13655 and provided the 2014 salary tables, locality pay areas and percentages, and information on general pay administration matters and other related information. The “2014 Salary Tables” posted on OPM's Web site at <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/> are the official rates of pay for affected employees and are hereby incorporated as part of this notice.

U.S. Office of Personnel Management.

**Katherine Archuleta,**

Director.

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**BILLING CODE 6325–39–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71652; File No. TP 14–05]

### Order Granting Limited Exemptions From Exchange Act Rule 10b–17 and Rules 101 and 102 of Regulation M to First Trust Dorsey Wright Focus Five ETF Pursuant to Exchange Act Rule 10b–17(b)(2) and Rules 101(d) and 102(e) of Regulation M

March 5, 2014.

By letter dated March 5, 2014 (the “Letter”), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for First Trust Exchange-Traded Fund VI (the “Trust”) on behalf of the Trust, First Trust Dorsey Wright Focus Five ETF (the “Fund”), any national

securities exchange on or through which shares issued by the Fund (“Shares”) may subsequently trade, First Trust Portfolios L.P., and persons or entities engaging in transactions in Shares (collectively, the “Requestors”) requested exemptions, or interpretive or no-action relief, from Rule 10b–17 of the Securities Exchange Act of 1934, as amended (“Exchange Act”) and Rules 101 and 102 of Regulation M in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 50,000 shares (“Creation Units”).

The Trust is registered with the Commission under the Investment Company Act of 1940, as amended (“1940 Act”), as an open-end management investment company. The Fund seeks to track the performance of an underlying index developed by Dorsey, Wright & Associates called the Dorsey Wright Focus Five Index (“Index”). The Index is designed to provide targeted exposure to the five First Trust sector-based exchange traded funds (“ETFs”) (*i.e.*, sector-based ETFs also advised by the investment advisor to the Fund) that the index provider believes offer the greatest potential to outperform other First Trust sector-based ETFs. The Index will take into account the performance of each of these sector or industry ETFs relative to one another. The Fund intends to operate as an “ETF of ETFs” by seeking to track the performance of its underlying Index through investing at least 90% of its net assets (plus the amount of any borrowings for investment purposes) in the ETFs which comprise the Index. Except for the fact that the Fund will operate as an ETF of ETFs, the Fund will operate in a manner identical to the ETFs that are included in the Index.

The Requestors represent, among other things, the following:

- Shares of the Fund will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The Trust will continuously redeem Creation Units at net asset value (“NAV”) and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Fund will be listed and traded on the Nasdaq Stock Market LLC or other exchange in accordance with exchange listing standards that are, or will become, effective pursuant to

Section 19(b) of the Exchange Act (the “Exchange”);<sup>1</sup>

- All ETFs in which the Fund is invested will meet all conditions set forth in a relevant class relief letter,<sup>2</sup> or will have received individual relief from the Commission;

- At least 70% of the Fund is comprised of component securities that meet the minimum public float and minimum average daily trading volume thresholds under the “actively-traded securities” definition found in Regulation M for excepted securities during each of the previous two months of trading prior to formation of the Fund; provided, however, that if the Fund has 200 or more component securities, then 50% of the component securities must meet the actively-traded securities thresholds;

- All the components of the Index will have publicly available last sale trade information;

- The intra-day proxy value of the Fund per share and the value of the Index will be publicly disseminated by a major market data vendor throughout the trading day;

- On each business day before the opening of business on the Exchange, the Fund’s custodian, through the National Securities Clearing Corporation, will make available the list of the names and the numbers of securities and other assets of the Fund’s portfolio that will be applicable that day to creation and redemption requests;

- The Exchange or other market information provider will disseminate (i) continuously every 15 seconds throughout the trading day, through the facilities of the consolidated tape, the market value of a Share and (ii) every 15 seconds throughout the trading day, a calculation of the intraday indicative value of a Share;

- The arbitrage mechanism will be facilitated by the transparency of the

Fund’s portfolio and the availability of the intra-day indicative value, the liquidity of securities and other assets held by the Fund, ability to acquire such securities, as well as the arbitrageurs’ ability to create workable hedges;

- The Fund will invest solely in liquid securities;

- The Fund will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;

- The Requestors believe that arbitrageurs are expected to take advantage of price variations between the Fund’s market price and its NAV; and

- A close alignment between the market price of Shares and the Fund’s NAV is expected.

#### Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.<sup>3</sup> However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exemption from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares of the Fund as described in more detail below.

#### Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any “distribution participant” and its “affiliated purchasers” from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines “distribution” to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their

affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will continuously redeem at the NAV Creation Unit size aggregations of the Shares of the Fund and that a close alignment between the market price of Shares and the Fund’s NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (d) of Rule 101 of Regulation M with respect to the Fund, thus permitting persons participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.<sup>4</sup>

#### Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, and any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem at the NAV Creation Units of Shares of the Fund and that a close alignment between the market price of Shares and the Fund’s NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

#### Rule 10b–17

Rule 10b–17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with

<sup>1</sup> Further, the Letter states that should the Shares also trade on a market pursuant to unlisted trading privileges, such trading will be conducted pursuant to self-regulatory organization rules that have become effective pursuant to Section 19(b) of the Exchange Act

<sup>2</sup> Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee (November 21, 2005); Letter from Raquel L. Russell, Branch Chief, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP (June 21, 2006); Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (October 24, 2006); Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Esq., Willkie Farr & Gallagher LLP (April 9, 2007); or Letter from Josephine Tao, Assistant Director, Division of Trading and Markets, to Domenick Pugliese, Esq., Paul, Hastings, Janofsky and Walker LLP (June 27, 2007).

<sup>3</sup> While ETFs operate under exemptions from the definitions of “open-end company” under Section 5(a)(1) of the 1940 Act and “redeemable security” under Section 2(a)(32) of the 1940 Act, the Fund and its securities do not meet those definitions.

<sup>4</sup> Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an “attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period” within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

Rule 10b-17(b). Based on the representations and facts in the Letter, and subject to the conditions below, we find that it is appropriate in the public interest, and consistent with the protection of investors to grant the Trust a conditional exemption from Rule 10b-17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10b-17 will not be implicated.<sup>5</sup>

### Conclusion

*It is hereby ordered*, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.

*It is further ordered*, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

*It is further ordered*, pursuant to Rule 10b-17(b)(2), that the Trust, based on the representations and the facts presented in the Letter and subject to the conditions below, is exempt from the requirements of Rule 10b-17 with respect to transactions in the shares of the Fund.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b-17 except for Rule 10b-17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons relying upon this

<sup>5</sup> We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Fund. This is because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

exemption shall discontinue transactions involving the Shares of the Fund under the circumstances described above and in the Letter, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014-05177 Filed 3-10-14; 8:45 am]

**BILLING CODE 8011-01-P**

## 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, March 13, 2014 at 2 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 her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(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 matter at the Closed Meeting.

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

The subject matter of the Closed Meeting will be:

<sup>6</sup> 17 CFR 200.30-3(a)(6) and (9).

Institution and settlement of injunctive actions;  
institution and settlement of administrative proceedings; an adjudicatory matter; 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: March 6, 2014.

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. 2014-05321 Filed 3-7-14; 11:15 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71651; File No. SR-BATS-2014-003]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Modify the BATS Options Opening Process

March 5, 2014.

#### I. Introduction

On January 6, 2014, BATS Exchange, Inc. ("Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify the BATS options opening process. On January 16, 2014, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on January 23, 2014.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

#### II. Description of the Proposal

The Exchange proposes to amend its rules to allow the Exchange's equity

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

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

<sup>3</sup> In Amendment No. 1, the Exchange corrected a typographical error contained in its original submission related to its description of how the Exchange's Rule 20.6, governing Obvious Errors, currently operates.

<sup>4</sup> See Securities Exchange Act Release No. 71327 (January 16, 2014), 79 FR 3897 (January 23, 2014) ("Notice").