

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 to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2014-41 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-Phlx-2014-41. 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-Phlx-2014-41 and should be submitted on or before July 29, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72506; File No. SR-NASDAQ-2014-050]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of the Shares of the First Trust Strategic Income ETF of First Trust Exchange-Traded Fund IV

July 1, 2014.

#### I. Introduction

On May 5, 2014, The NASDAQ Stock Market LLC ("Exchange" or "Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the First Trust Strategic Income ETF ("Fund") of First Trust Exchange-Traded Fund IV ("Trust") under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The proposed rule change was published for comment in the **Federal Register** on May 21, 2014.<sup>3</sup> The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

#### II. Description of Proposed Rule Change

The Exchange has made the following representations and statements in describing the Fund and its investment strategies, including other portfolio holdings and investment restrictions.<sup>4</sup>

##### General

The Fund will be an actively-managed exchange-traded fund ("ETF"). The

<sup>25</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 72169 (May 15, 2014), 79 FR 29247 ("Notice").

<sup>4</sup> The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, net asset value ("NAV") calculation, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions, and taxes, among other information, is included in the Notice and the Registration Statement, as applicable. See Notice and Registration Statement, *supra* note 3 and *infra* note 5, respectively.

Shares will be offered by the Trust, which was established as a Massachusetts business trust on September 15, 2010.<sup>5</sup> The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N-1A ("Registration Statement") with the Commission.<sup>6</sup> The Fund will be a series of the Trust. The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

First Trust Advisors L.P. will be the investment adviser ("Adviser") to the Fund. The following will serve as investment sub-advisers (each a "Sub-Adviser") to the Fund: First Trust Global Portfolios Ltd ("First Trust Global"); Energy Income Partners, LLC ("EIP"); Stonebridge Advisors LLC ("Stonebridge"); and Richard Bernstein Advisors LLC ("RBA").<sup>7</sup> First Trust Portfolios L.P. ("Distributor") will be the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon Corporation ("BNY") will act as the administrator, accounting agent, custodian and transfer agent to the Fund.

The primary investment objective of the Fund will be to seek risk-adjusted

<sup>5</sup> The Commission has issued an order granting certain exemptive relief under the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act"). See Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812-13795) (the "Exemptive Relief"). In addition, the Commission has issued no-action relief pertaining to the Fund's ability to invest in derivatives notwithstanding certain representations in the application for the Exemptive Relief. See Commission No-Action Letter (December 6, 2012).

<sup>6</sup> See Post-Effective Amendment No. 67 to Registration Statement on Form N-1A for the Trust, dated May 2, 2014 (File Nos. 333-174332 and 811-22559).

<sup>7</sup> The Exchange states that neither the Adviser nor any Sub-Adviser is a broker-dealer, although the Adviser, First Trust Global, EIP and Stonebridge are each affiliated with a broker-dealer. The Exchange states that RBA is currently not affiliated with a broker-dealer. The Exchange states that the Adviser and the broker-dealer affiliated Sub-Advisers have each implemented a fire wall with respect to their respective broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In addition, the Exchange states that personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio. Furthermore, the Exchange states that in the event (a) the Adviser or a Sub-Adviser becomes, or 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 and/or such broker-dealer affiliate, as applicable, 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.

income and its secondary objective will be capital appreciation. Under normal market conditions,<sup>8</sup> the Fund will seek to achieve its investment objectives by following a strategic and tactical asset allocation process that will provide diversified exposure to income-producing asset classes.

The Fund will be a multi-manager, multi-strategy actively-managed exchange-traded fund. The Adviser will determine the Fund's strategic allocation among various general investment categories and allocate the Fund's assets to portfolio management teams comprised of personnel of the Adviser and/or a Sub-Adviser (each a "Management Team"), which will employ their respective investment strategies. The Fund's investment categories, which are described in more detail below, will be: (i) High yield corporate bonds and first lien senior secured floating rate bank loans (referred to as "senior loans"); (ii) mortgage-related investments; (iii) preferred securities; (iv) international sovereign bonds; (v) equity securities of Energy Infrastructure Companies (as defined below); (vi) dividend paying domestic equity securities and Depositary Receipts (as defined below), together with a related option overlay strategy; and (vii) other derivative instruments.

The Fund may add or remove investment categories or Management Teams at the Adviser's discretion. The Fund will seek to provide income and total return by having each Management Team focus on those securities within its respective investment category. The Fund may invest in securities directly or, alternatively, may invest in other ETFs that generally provide exposure to the various investment categories.<sup>9</sup> The

<sup>8</sup> 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 securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

<sup>9</sup> An ETF is an investment company registered under the 1940 Act that holds a portfolio of securities. Many ETFs are designed to track the performance of a securities index, including industry, sector, country and region indexes. ETFs included in the Fund 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 other ETFs and their sponsors from the Commission. In addition, the Fund may invest in the securities of certain other investment companies, including ETFs, in excess of the limits imposed under the 1940 Act pursuant to an exemptive order obtained by the Trust and the Adviser from the Commission. See Investment

Adviser expects that the Fund may at times invest significantly (and, potentially, may invest up to 50% of its net assets) in other ETFs, including but not limited to, other ETFs that are advised by the Adviser; however, the Fund does not intend to operate principally as a "fund of funds." Any other ETFs in which the Fund invests to gain exposure to an investment category may be subject to investment parameters that differ in certain respects from those that have been established for the Fund for such investment category, as set forth below.

To enhance expected return, the Adviser's investment committee will, on a generally periodic basis, tactically adjust investment category weights. Security selection will be performed for the Fund by the Adviser and/or a Sub-Adviser.

With respect to each investment category, the liquidity of a security will be a substantial factor in the Fund's security selection process. The Fund will not purchase any securities or other assets that, in the opinion of the applicable Management Team, are illiquid if, as a result, more than 15% of the value of the Fund's net assets will be invested in illiquid assets ("15% Limitation").<sup>10</sup> Illiquid assets 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 Adviser will communicate with the various Management Teams regarding the Fund's ongoing compliance with the 15% Limitation.

Except as specifically provided herein, the fixed income and equity securities in which the Fund will invest may be issued by U.S. and non-U.S. issuers of all kinds and of any capitalization range and credit quality. The Fund represents that its portfolio will include a minimum of 13 non-affiliated issuers of fixed income

Company Act Release No. 30377 (February 5, 2013) (File No. 812-13895). The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), 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 or inverse leveraged (e.g., 2X or -3X) ETFs.

<sup>10</sup> In reaching liquidity decisions, the Adviser and/or Management Team 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 in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

securities. In addition, the fixed income securities in which the Fund will invest may have effective or final maturities of any length. At least 90% of the Fund's net assets that are invested in exchange-traded equity securities of both domestic and foreign issuers, exchange-traded products and exchange-traded derivatives (in the aggregate) will be invested in investments 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.<sup>11</sup>

The Fund may invest in the equity securities (including without limitation preferred securities) of foreign issuers, either directly or through investments that are in the form of American Depositary Receipts ("ADRs") or Global Depositary Receipts ("GDRs" and, together with ADRs, "Depositary Receipts").<sup>12</sup> The Depositary Receipts in which the Fund invests will be exchange-traded and will not include unsponsored Depositary Receipts.

The Fund's exposure to any single country (outside of the U.S.) will generally be limited to 20% of the Fund's net assets. The portion of the Fund's net assets that may be denominated in currencies other than the U.S. dollar is not expected to exceed 30%. To the extent the Fund invests in such assets, 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 from time to time purchase securities on a "when-issued" or other delayed-delivery basis. To the extent required under applicable federal securities laws (including the 1940 Act), rules, and interpretations thereof, the Fund will "set aside" liquid assets or engage in other measures to "cover" open positions held in connection with the foregoing types of transactions.

The investment categories in which the Fund intends to invest and the investment strategies that the applicable Management Teams are expected to pursue are described below:

<sup>11</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

<sup>12</sup> ADRs are U.S. dollar denominated receipts typically issued by U.S. banks and trust companies that evidence ownership of underlying securities issued by a foreign issuer. GDRs are receipts issued throughout the world that evidence a similar arrangement. ADRs and GDRs may trade in currencies that differ from the currency in which the underlying security trades. Generally, ADRs, in registered form, are designed for use in the U.S. securities markets. GDRs, in registered form, are traded both in the United States and in Europe and are designed for use throughout the world.

• *High Yield Corporate Bonds and Senior Loans.* The Fund intends to invest between 0% and 30%, but may invest up to 50%, of its net assets in a combination of high yield corporate bonds and senior loans.<sup>13</sup> Such bonds and loans in which the Fund invests directly will be issued by entities domiciled in the United States. Under normal market conditions, the Fund will seek to invest at least 75% of its net assets that are invested in such bonds and loans (in the aggregate) in bonds and loans that, at the time of original issuance, have at least \$100 million par amount outstanding.

The high yield corporate bonds in which the Fund will invest will be rated below investment grade<sup>14</sup> at the time of purchase or unrated and deemed by the Adviser and/or the applicable Management Team to be of comparable quality,<sup>15</sup> commonly referred to as “junk” bonds. For purposes of determining whether a security is below investment grade, the lowest available rating will be considered. High yield debt may be issued, for example, by companies without long track records of sales and earnings or by issuers that have questionable credit strength. Corporate bonds may carry fixed or floating rates of interest.

The senior loans in which the Fund will invest will represent amounts borrowed by companies or other entities from banks and other lenders. In many cases, senior loans are issued in connection with recapitalizations, acquisitions, leveraged buyouts, and refinancings. A significant portion of the senior loans in which the Fund will invest are expected to be rated below investment grade or unrated.

<sup>13</sup> For the avoidance of doubt, this investment category and these percentages will not include so-called baby bonds, which are included in “Preferred Securities” (described below).

<sup>14</sup> Securities rated below investment grade include securities that are rated Ba1/BB+/BB+ or below by Moody’s Investors Service, Inc. (“Moody’s”), Fitch Ratings (“Fitch”), or Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. (“S&P Ratings”), respectively, or another nationally recognized statistical rating organization (“NRSRO”).

<sup>15</sup> Comparable quality of unrated securities will be determined by the Adviser and/or the applicable Management Team based on fundamental credit analysis of the unrated security and comparable NRSRO-rated securities. On a best efforts basis, the Adviser and/or the applicable Management Team will attempt to make a rating determination based on publicly available data. In making a “comparable quality” determination, the Adviser and/or the applicable Management Team may consider, for example, whether the issuer of the security has issued other rated securities, the nature and provisions of the relevant security, whether the obligations under the relevant security are guaranteed by another entity and the rating of such guarantor (if any), relevant cash flows, macroeconomic analysis, and/or sector or industry analysis.

A senior loan is considered senior to all other unsecured claims against the borrower, and senior to or *pari passu* with all other secured claims, meaning that in the event of a bankruptcy, the senior loan, together with all other first lien claims, is entitled to be the first to be repaid out of the proceeds of the assets securing the loans, before other existing unsecured claims or interests receive repayment. However, in bankruptcy proceedings, there may be other claims, such as taxes or additional advances, which take precedence.

Senior loans have interest rates that reset periodically. The interest rates on senior loans are generally based on a percentage above the London Interbank Offered Rate (LIBOR), a U.S. bank’s prime or base rate, the overnight federal funds rate, or another rate. Senior loans may be structured and administered by a financial institution that acts as the agent of the lenders participating in the senior loan. The Fund may acquire senior loans directly from a lender or through the agent, as an assignment from another lender who holds a senior loan, or as a participation interest in another lender’s senior loan or portion thereof.

The Fund will generally invest in senior loans that the Adviser and/or the applicable Management Team deems to be liquid with readily available prices.

The Management Team does not intend to purchase senior loans that are in default; however, the Fund may hold a senior loan that has defaulted subsequent to the purchase by the Fund.

• *Mortgage-Related Investments.* The Fund intends to invest between 0% and 30%, but may invest up to 50%, of its net assets in the mortgage-related debt securities and other mortgage-related instruments described below (collectively, “Mortgage-Related Investments”).

The Mortgage-Related Investments in which the Fund invests will primarily consist of investment grade securities (*i.e.*, securities with credit ratings within the four highest rating categories of an NRSRO at the time of purchase or securities that are unrated and deemed by the Adviser and/or the applicable Management Team to be of comparable quality<sup>16</sup> at the time of purchase). 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. In addition, if a security experiences a decline in credit quality and falls below investment

grade, the Fund may continue to hold the security.

The types of Mortgage-Related Investments in which the Fund will invest are described in the following three paragraphs:

The Fund will invest in mortgage-backed securities, such as residential mortgage-backed securities (“RMBS”) and commercial mortgage-backed securities (“CMBS”). Mortgage-backed securities represent an interest in a pool of mortgage loans made by banks and other financial institutions to finance purchases of homes, commercial buildings and other real estate. The individual mortgage loans are packaged or “pooled” together for sale to investors. As the underlying mortgage loans are paid off, investors receive principal and interest payments.<sup>17</sup>

The mortgage-backed securities in which the Fund will invest may be, but are not required to be, issued or guaranteed by the U.S. government, its agencies or instrumentalities, such as Ginnie Mae and U.S. government-sponsored entities, such as Fannie Mae and Freddie Mac (the U.S. government, its agencies and instrumentalities, and U.S. government-sponsored entities are referred to collectively as “Government Entities”).<sup>18</sup> The Fund, however, will limit its investments in mortgage-backed securities that are not issued or guaranteed by Government Entities to 20% of its net assets. Many mortgage-backed securities are pass-through securities, which means they provide

<sup>17</sup> Mortgage-backed securities may be fixed rate or adjustable rate mortgage-backed securities (“ARMS”). Certain mortgage-backed securities (including RMBS and CMBS), where mortgage payments are divided up between paying the loan’s principal and paying the loan’s interest, are referred to as stripped mortgage-backed securities (“SMBS”). Further, mortgage-backed securities can also be categorized as collateralized mortgage obligations (“CMOs”) or real estate mortgage investment conduits (“REMICS”) where they are divided into multiple classes with each class being entitled to a different share of the principal and/or interest payments received from the pool of underlying assets.

<sup>18</sup> Securities issued or guaranteed by Government Entities have different levels of credit support. For example, Ginnie Mae securities carry a guarantee as to the timely repayment of principal and interest that is backed by the full faith and credit of the U.S. government. However, the full faith and credit guarantee does not apply to the market prices and yields of the Ginnie Mae securities or to the net asset value, trading price or performance of the Fund, which will vary with changes in interest rates and other market conditions. Fannie Mae and Freddie Mac pass-through mortgage certificates are backed by the credit of the respective Government Entity and are not guaranteed by the U.S. government. Other securities issued by Government Entities (other than the U.S. government) may only be backed by the creditworthiness of the issuing institution, not the U.S. government, or the issuers may have the right to borrow from the U.S. Treasury to meet their obligations.

<sup>16</sup> See *supra* note 15.

investors with monthly payments consisting of a pro rata share of both regular interest and principal payments as well as unscheduled prepayments on the underlying mortgage loans. Because prepayment rates of individual mortgage pools vary widely, the average life of a particular pool cannot be predicted accurately. Adjustable rate mortgage-backed securities include ARMS and other mortgage-backed securities with interest rates that adjust periodically to reflect prevailing market rates.

Additionally, the Fund may invest in mortgage dollar rolls.<sup>19</sup> The Fund intends to enter into mortgage dollar rolls only with high quality securities dealers and banks, as determined by the Adviser. The Fund may also invest in to-be-announced transactions (“TBA Transactions”).<sup>20</sup> Further, the Fund may enter into short sales as part of its overall portfolio management strategies or to offset a potential decline in the value of a security; however, the Fund does not expect, under normal market conditions, to engage in short sales with respect to more than 30% of the value of its net assets that are invested in Mortgage-Related Investments. To the extent required under applicable federal securities laws, rules, and interpretations thereof, the Fund will “set aside” liquid assets or engage in other measures to “cover” open positions and short positions held in connection with the foregoing types of transactions.

- *Preferred Securities.* The Fund intends to invest between 0% and 30%, but may invest up to 50%, of its net assets in preferred securities issued by

<sup>19</sup> In a mortgage dollar roll, the Fund will sell (or buy) mortgage-backed securities for delivery on a specified date and simultaneously contract to repurchase (or sell) substantially similar (same type, coupon and maturity) securities on a future date. During the period between a sale and repurchase, the Fund will forgo principal and interest paid on the mortgage-backed securities. The Fund will earn or lose money on a mortgage dollar roll from any difference between the sale price and the future purchase price. In a sale and repurchase, the Fund will also earn money on the interest earned on the cash proceeds of the initial sale.

<sup>20</sup> A TBA Transaction is a method of trading mortgage-backed securities. TBA Transactions generally are conducted in accordance with widely-accepted guidelines which establish commonly observed terms and conditions for execution, settlement and delivery. In a TBA Transaction, the buyer and the seller agree on general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date. The mortgage TBA market is liquid and positions can be easily added, rolled or closed. According to the Financial Industry Regulatory Authority (“FINRA”) Trade Reporting and Compliance Engine (“TRACE”) data, TBA Transactions represented approximately 93% of total trading volume for agency mortgage-backed securities in the month of January 2014.

U.S. and non-U.S. issuers.<sup>21</sup> Under normal market conditions, the Fund will seek to invest at least 75% of its net assets that are invested in preferred securities in preferred securities that have a minimum initial issuance amount of at least \$100 million. Initially, at least 50% of the Fund’s net assets that are invested in preferred securities will be invested in exchange-listed preferred securities, although this percentage may decrease in the future. Preferred securities held by the Fund will generally pay fixed or adjustable rate distributions to investors and will have preference over common stock in the payment of distributions and the liquidation of a company’s assets, which means that 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.

- *International Sovereign Bonds.* The Fund intends to invest between 0% and 30%, but may invest up to 50%, of its net assets in debt securities, including inflation-linked bonds,<sup>22</sup> issued by foreign governments or their subdivisions, agencies and government-sponsored enterprises (“Sovereign

<sup>21</sup> For the avoidance of doubt, this investment category and these percentages will not include those investments in preferred securities that are included in “Equity Securities of Energy Infrastructure Companies” (described below). Certain of the preferred securities in which the Fund will invest will be traditional preferred stocks that issue dividends that qualify for the dividends received deduction under which “qualified” domestic corporations are able to exclude a percentage of the dividends received from their taxable income. Other preferred securities in which the Fund will invest will be preferred stocks that do not issue dividends that qualify for the dividends received deduction or generate qualified dividend income. Additionally, certain of the preferred securities in which the Fund will invest may be so-called baby bonds (*i.e.*, small denomination, typically \$25 par value, bonds that often have certain characteristics associated with fixed income securities sold to retail investors (for example, they typically pay a quarterly coupon and are typically investment grade)). Hybrid preferred securities, another type of preferred securities, are typically junior and fully subordinated liabilities of an issuer or the beneficiary of a guarantee that is junior and fully subordinated to the other liabilities of the guarantor.

<sup>22</sup> Inflation-linked bonds are fixed income securities that are structured to provide protection against inflation. The value of the inflation-linked bond’s principal or the interest income paid on the bond is adjusted to track changes in an official inflation measure. The value of inflation-linked bonds is expected to change in response to changes in real interest rates. Real interest rates are tied to the relationship between nominal interest rates and the rate of inflation. If nominal interest rates increase at a faster rate than inflation, real interest rates may rise, leading to a decrease in the value of inflation-linked bonds.

Debt”).<sup>23</sup> At least 50% of the Fund’s net assets that are invested in Sovereign Debt will be invested in securities of issuers rated investment grade (BBB-/Baa3 or higher) at the time of purchase by at least one NRSRO and unrated securities judged to be of comparable quality<sup>24</sup> by the Adviser and/or the applicable Management Team. Up to 50% of its net assets invested in Sovereign Debt may be invested in securities of issuers rated below investment grade at the time of purchase (*i.e.*, “junk” bonds). If a security or issuer is rated by multiple NRSROs and receives different ratings, the Fund will treat the security or issuer (as applicable) as being rated in the highest rating category received from an NRSRO. In addition, if a security or issuer (as applicable) experiences a decline in credit quality and falls below investment grade, the Fund may continue to hold the security and it will not count toward the investment limit; however, the security will be taken into account for purposes of determining whether purchases of additional securities will cause the Fund to violate such limit.

The Fund intends to invest in Sovereign Debt of issuers in both developed and emerging markets.<sup>25</sup> In addition, the Fund expects that, under normal market conditions, at least 80% of the Sovereign Debt in which it invests will be issued by issuers with outstanding debt of at least \$200 million

<sup>23</sup> For the avoidance of doubt, Sovereign Debt includes debt obligations denominated in local currencies or U.S. dollars. Moreover, given that it includes debt issued by subdivisions, agencies and government-sponsored enterprises, Sovereign Debt may include debt commonly referred to as “quasi-sovereign debt.” Sovereign Debt may also include issues denominated in emerging market local currencies that are issued by “supranational issuers,” such as the International Bank for Reconstruction and Development and the International Finance Corporation, as well as development agencies supported by other national governments. According to the Adviser and the applicable Management Team, while there is no universally accepted definition of what constitutes an “emerging market,” in general, emerging market countries are characterized by developing commercial and financial infrastructure with significant potential for economic growth and increased capital market participation by foreign investors.

<sup>24</sup> See *supra* note 15.

<sup>25</sup> The Fund intends, initially, to invest in Sovereign Debt of the following issuers: Argentina; Brazil; Chile; Colombia; Costa Rica; Dubai (United Arab Emirates); Hungary; Indonesia; Malaysia; Mexico; Nigeria; Peru; Philippines; Poland; Qatar; Romania; Russia; South Africa; South Korea; Sri Lanka; Thailand; Turkey; Venezuela; and Vietnam, although this list may change based on market developments. The percentage of Fund assets invested in a specific region, country or issuer will change from time to time.

(or the foreign currency equivalent thereof).

- *Equity Securities of Energy Infrastructure Companies.* The Fund intends to invest between 0% and 50% of its net assets in exchange-traded equity securities of companies deemed by the applicable Management Team to be engaged in the energy infrastructure sector. These companies principally include publicly-traded master limited partnerships and limited liability companies taxed as partnerships (“MLPs”) (described below), MLP affiliates (described below), “Canadian Income Equities,” which are successor companies to Canadian income trusts,<sup>26</sup> pipeline companies, utilities, and other companies that derive at least 50% of their revenues from operating or providing services in support of infrastructure assets such as pipelines, power transmission and petroleum and natural gas storage in the petroleum, natural gas and power generation industries (collectively, “Energy Infrastructure Companies”).

As indicated above, the Fund may invest in the equity securities of MLPs. MLPs are limited partnerships whose shares (or units) are listed and traded on a U.S. securities exchange. MLP units may be common or subordinated.<sup>27</sup> In addition, the Fund may invest in I-Shares,<sup>28</sup> which represent an ownership interest issued by an affiliated party of an MLP. The MLP affiliate uses the proceeds from the sale of I-Shares to purchase limited partnership interests in the MLP in the form of i-units. I-units have similar features as MLP common units in terms of voting rights, liquidation preference and distributions. However, rather than receiving cash, the MLP affiliate receives additional i-units in an amount equal to the cash distributions received by MLP common units. Similarly, holders of I-Shares will receive additional I-Shares, in the same proportion as the MLP affiliates’ receipt of i-units, rather than cash distributions.

<sup>26</sup> The term “Canadian income trusts” refers to qualified income trusts designated by the Canada Revenue Agency that derive income and gains from the exploration, development, mining or production, processing, refining, transportation (including pipelines transporting gas, oil or products thereof), or the marketing of any mineral or natural resources.

<sup>27</sup> MLPs generally have two classes of owners, the general partner and limited partners. The general partner, which is generally a major energy company, investment fund or the management of the MLP, typically controls the MLP through a 2% general partner equity interest in the MLP plus common units and subordinated units. Limited partners own the remainder of the partnership, through ownership of common units, and have a limited role in the partnership’s operations and management.

<sup>28</sup> As a matter of clarification, the “I-Shares” referred to herein are not “iShares” ETFs.

I-Shares themselves have limited voting rights which are similar to those applicable to MLP common units. I-Shares are listed and traded on a U.S. national securities exchange.

- *Dividend Paying Domestic Equity Securities and Depositary Receipts and Related Option Overlay Strategy.* The Fund intends to invest between 0% and 30%, but may invest up to 50%, of its net assets in dividend paying U.S. exchange-traded equity securities (including common stock) of companies domiciled in the United States and Depositary Receipts.<sup>29</sup> In connection with its investments in dividend paying domestic equity securities, the Fund may use an option overlay strategy (“Option Overlay Strategy”).<sup>30</sup> To implement this strategy, the Fund will write (sell) covered U.S. exchange-traded call options in order to seek additional cash flow in the form of premiums on the options. The market value of the Option Overlay Strategy may be up to 30% of the Fund’s overall net asset value and the notional value of the calls written may be up to 30% of the overall Fund. The maturity of the options utilized will generally be between one week and three months. The options written may be in-the-money, at-the-money or out-of-the-money.

- *Derivative Instruments:*

As described below, the Fund may invest in derivative instruments.<sup>31</sup> Not including the Option Overlay Strategy, no more than 20% of the value of the Fund’s net assets will be invested in derivative instruments (“20% Limitation”).<sup>32</sup> In general, the Fund may

<sup>29</sup> For the avoidance of doubt, this investment category and these percentages will not include investments in preferred securities (described above under “Preferred Securities”), investments in those equity securities that are included in “Equity Securities of Energy Infrastructure Companies” (described above), or investments in ETFs that are intended to provide exposure to any of the other five investment categories.

<sup>30</sup> The Fund’s investments in options in connection with the Option Overlay Strategy will not be included for purposes of determining compliance with the 20% Limitation (defined below).

<sup>31</sup> The Fund may invest in derivative instruments for various purposes, such as to seek to enhance return, to hedge some of the risks of its investments in securities, as a substitute for a position in the underlying asset, to reduce transaction costs, to maintain full market exposure (which means to adjust the characteristics of its investments to more closely approximate those of the markets in which it invests), to manage cash flows, to limit exposure to losses due to changes to non-U.S. currency exchange rates or to preserve capital.

<sup>32</sup> Because the Option Overlay Strategy will be excluded from the 20% Limitation, the Fund’s total investments in derivative instruments may exceed 20% of the value of its net assets. The Fund will limit its direct investments in futures and options on futures to the extent necessary for the Adviser

invest in exchange-listed futures contracts, exchange-listed options, exchange-listed options on futures contracts, and exchange-listed stock index options.<sup>33</sup>

Primarily in connection with its investments in Sovereign Debt (but, to the extent applicable, in connection with other investments), the Fund may actively manage its foreign currency exposures, including through the use of forward currency contracts, non-deliverable forward currency contracts, exchange-listed currency futures and exchange-listed currency options; such derivatives use will be included for purposes of determining compliance with the 20% Limitation. The Fund may, for instance, enter into forward currency contracts in order to “lock in” the exchange rate between the currency it will deliver and the currency it will receive for the duration of the contract<sup>34</sup>

to claim the exclusion from regulation as a “commodity pool operator” with respect to the Fund under Rule 4.5 promulgated by the Commodity Futures Trading Commission (“CFTC”), as such rule may be amended from time to time. Under Rule 4.5 as currently in effect, the Fund will limit its trading activity in futures and options on futures (excluding activity for “bona fide hedging purposes,” as defined by the CFTC) such that it will meet one of the following tests: (i) Aggregate initial margin and premiums required to establish its futures and options on futures positions will not exceed 5% of the liquidation value of the Fund’s portfolio, after taking into account unrealized profits and losses on such positions; or (ii) aggregate net notional value of its futures and options on futures positions will not exceed 100% of the liquidation value of the Fund’s portfolio, after taking into account unrealized profits and losses on such positions.

<sup>33</sup> Any exchange-traded derivatives in which the Fund invests will trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. The exchange-listed futures and options contracts in which the Fund may invest will be listed on exchanges in the U.S., Europe, London, Hong Kong, Singapore, Australia or Canada. The United Kingdom’s primary financial markets regulator (the Financial Conduct Authority), Hong Kong’s primary financial markets regulator (the Securities and Futures Commission), Singapore’s primary financial markets regulator (the Monetary Authority of Singapore), Australia’s primary financial markets regulator (the Australian Securities and Investments Commission), and certain Canadian financial markets regulators (including the Alberta Securities Commission, the British Columbia Securities Commission, the Ontario Securities Commission, and Autorite des marches financiers (Quebec)) are signatories to the International Organization of Securities Commissions (“IOSCO”) Multilateral Memorandum of Understanding (“MMOU”), which is a multi-party information sharing arrangement among financial regulators. Both the Commission and the Commodity Futures Trading Commission are signatories to the IOSCO MMOU.

<sup>34</sup> The Fund will invest only in currencies, and instruments that provide exposure to such currencies, that have significant foreign exchange turnover and are included in the Bank for International Settlements, *Triennial Central Bank Survey, Global Foreign Exchange Market Turnover in 2013* (“BIS Survey”). The Fund may invest in

Continued

and may buy or sell exchange-listed futures contracts on U.S. Treasury securities, non-U.S. government securities and major non-U.S. currencies.

The Fund will comply with the regulatory requirements of the Commission to maintain assets as "cover," maintain segregated accounts, and/or make margin payments when it takes positions in derivative instruments involving obligations to third parties (*i.e.*, instruments other than purchase options). If the applicable guidelines prescribed under the 1940 Act so require, the Fund will earmark or set aside cash, U.S. government securities, high grade liquid debt securities and/or other liquid assets permitted by the Commission in a segregated custodial account in the amount prescribed.

The Fund will only enter into transactions in derivative instruments with counterparties that the Adviser and/or the applicable Management Team reasonably believes are capable of performing under the applicable contract.<sup>35</sup>

The Fund's investments in derivative instruments will be consistent with the Fund's investment objectives and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of an index.

#### Other Investments

Under normal market conditions, the Fund will invest substantially all of its assets to meet its investment objectives and, as described above, the Fund may invest in derivative instruments. In addition, the Fund may invest its remaining assets in other securities and financial instruments, as generally described below.

The Fund may invest up to 20% of its net assets in short-term debt securities, money market funds and other cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings will vary and will depend on

currencies, and instruments that provide exposure to such currencies, selected from the top 40 currencies (as measured by percentage share of average daily turnover for the applicable month and year) included in the BIS Survey.

<sup>35</sup> 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 and/or the applicable Management Team will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser's and/or Management Team's analysis will evaluate each approved counterparty using various methods of analysis and may consider the Adviser's and/or Management Team's past experience with the counterparty, its known disciplinary history and its share of market participation.

several factors, including market conditions. For temporary defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the Fund (as a whole or with respect to one or more investment categories) may depart from its principal investment strategies and invest part or all of its assets in these securities or it may hold cash. During such periods, the Fund may not be able to achieve its investment objectives. The Fund (as a whole or with respect to one or more investment categories) may adopt a defensive strategy when the Adviser and/or a Management Team 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 S&P Ratings, Moody's or Fitch and having a maturity of one year or less. The use of temporary investments will not be a part of a principal investment strategy of the Fund.

Short-term debt securities are the following: (1) Fixed rate and floating rate 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) short-term securities issued or guaranteed by non-U.S. governments or by their agencies or instrumentalities;<sup>36</sup> (3) certificates of deposit issued against funds deposited in a bank or savings and loan association; (4) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (5) repurchase agreements,<sup>37</sup> which involve purchases of debt securities; (6) 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; (7) commercial paper, which is short-term unsecured promissory notes; and (8) other securities that are similar to the

<sup>36</sup> The relevant non-U.S. government, agency or instrumentality must have a long-term debt rating of at least A by S&P Ratings, Moody's or Fitch.

<sup>37</sup> The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser and/or the applicable Management Team to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust ("Trust Board"). The Adviser and/or the Management Team will review and monitor the creditworthiness of such institutions. The Adviser and/or the Management Team will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

foregoing. The Fund may only invest in commercial paper rated A-1 or higher by S&P Ratings, Prime-1 or higher by Moody's or F1 or higher by Fitch.

In addition, to manage foreign currency exposures, the Fund may invest directly in foreign currencies, including without limitation in the form of bank and financial institution deposits, certificates of deposit, and bankers' acceptances denominated in a specified non-U.S. currency.

The Fund may invest in the securities of money market funds. The Fund may also invest in the securities of other ETFs that invest primarily in short-term debt securities, in addition to any investments in other ETFs described above.<sup>38</sup>

The Fund may invest up to 15% of its net assets in secured loans that are not first lien loans or loans that are unsecured (collectively referred to as "junior loans"). Junior loans have the same characteristics as senior loans except that junior loans are not first in priority of repayment and/or may not be secured by collateral. Accordingly, the risks associated with junior loans are higher than the risks for loans with first priority over the collateral. Because junior loans are lower in priority and/or unsecured, they are subject to the additional risk that the cash flow of the borrower may be insufficient to meet scheduled payments after giving effect to the secured obligations of the borrower or in the case of a default, recoveries may be lower for unsecured loans than for secured loans.<sup>39</sup>

In accordance with the 15% Limitation described above, the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser and/or the applicable Management Team.<sup>40</sup> 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 assets.

<sup>38</sup> See *supra* note 9.

<sup>39</sup> Junior loans generally have greater price volatility than senior loans and may be less liquid. There is also a possibility that originators will not be able to sell participations in junior loans, which would create greater credit risk exposure for the holders of such loans. Junior loans share the same risks as other below investment grade instruments.

<sup>40</sup> See *supra* note 10 and accompanying text.

The Fund will not concentrate in any one industry. For the avoidance of any doubt, however, this will not limit the Fund's investments in (a) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities or (b) securities of other investment companies.

### 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<sup>41</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>42</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>43</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, 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 initial and continued listing criteria in NASDAQ Rule 5735 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,<sup>44</sup> 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 Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association ("CTA") plans for the Shares. In addition, the Intraday Indicative Value,<sup>45</sup> as defined in Nasdaq

Rule 5735(c)(3), will be available on the NASDAQ OMX Information LLC proprietary index data service,<sup>46</sup> and will be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session.<sup>47</sup> On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund 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 NAV at the end of the business day.<sup>48</sup> The Fund's custodian, through the National Securities Clearing Corporation, will make available on each business day, prior to the opening of business on the Exchange, the list of the names and quantities of instruments, as well as the estimated amount of cash, comprising the creation basket of the Fund for that day. The NAV of the Fund 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.<sup>49</sup> 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. Quotation and last sale information for the underlying U.S. exchange-listed equity securities will be available via the CTA high-speed line,

viewed as a "real time" update of the NAV per Share of the Fund, which is calculated only once a day.

<sup>46</sup> 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.

<sup>47</sup> See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m., Eastern time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m., Eastern time; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m., Eastern time).

<sup>48</sup> The Disclosed Portfolio will include, as applicable, the names, quantities, percentage weightings and market values of the portfolio securities, financial instruments, and other assets held by the Fund. The Web site information will be publicly available at no charge.

<sup>49</sup> NAV will be calculated for the Fund by taking the market price of the Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, and dividing such amount by the total number of Shares outstanding,

and will be available from the national securities exchange on which they are listed. Pricing information for the underlying exchange-traded equity securities (including ETFs, exchange-traded preferred securities, and the exchange-traded equity securities described under "Dividend Paying Domestic Equity Securities and Depositary Receipts and Related Option Overlay Strategy" and "Equity Securities of Energy Infrastructure Companies"), exchange-traded derivative instruments and Depositary Receipts will be available from the exchanges on which they trade and from major market data vendors. Pricing information for corporate bonds, senior loans, non-exchange traded preferred securities, Sovereign Debt, Mortgage-Related Investments, forward currency contracts, non-deliverable forward currency contracts, and debt securities in which the Fund may invest that are described under "Other Investments" will be available from major broker-dealer firms and/or major market data vendors and/or pricing services. An additional source of price information for certain fixed income securities is FINRA's TRACE. Information relating to U.S. exchange-listed options will be available via the Options Price Reporting Authority. 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 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. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,<sup>50</sup> and trading in

<sup>50</sup> These reasons may include: (1) The extent to which trading is not occurring in the securities and/or the other assets composing 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. With respect to trading halts, the Exchange

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<sup>41</sup> 15 U.S.C. 78f.

<sup>42</sup> 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).

<sup>43</sup> 15 U.S.C. 78f(b)(5).

<sup>44</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>45</sup> According to the Exchange, the Intraday Indicative Value reflects an estimated intraday value of the Fund's Disclosed Portfolio, and will be based upon the current value for the components of the Disclosed Portfolio. The Intraday Indicative Value will be based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the Intraday Indicative Value and the market price may occur. The Intraday Indicative Value should not be



the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth additional circumstances under which trading in the Shares of the Fund may be halted. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. 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.<sup>51</sup> The Adviser and certain Sub-Advisers are affiliated with broker-dealers and have each implemented a fire wall with respect to their respective broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio.<sup>52</sup> The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>53</sup> The Exchange further represents 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

may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.

<sup>51</sup> See Nasdaq Rule 5735(d)(2)(B)(ii).

<sup>52</sup> See *supra* note 7. The Exchange states 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 the Sub-Advisers 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.

<sup>53</sup> The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

applicable federal securities laws. Moreover, prior to the commencement of trading, the Exchange states that it will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares.

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 the following:

(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) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

(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 2111A, 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 continued listing, the Fund must be in compliance with Rule 10A-3 under the Act.<sup>54</sup>

(6) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser and/or the applicable Management Team. The Fund will not purchase any securities or other assets that, in the opinion of the applicable Management Team, are illiquid if, as a result, more than 15% of the value of the Fund's net assets will be invested in illiquid assets.

(7) At least 90% of the Fund's net assets that are invested in exchange-traded equity securities of both domestic and foreign issuers, exchange-traded products and exchange-traded derivatives (in the aggregate) will be invested in investments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. The Depositary Receipts in which the Fund invests will be exchange-traded and will not include unsponsored Depositary Receipts. Any exchange-traded derivatives in which the Fund invests will trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(8) The Fund represents that its portfolio will include a minimum of 13 non-affiliated issuers of fixed income securities.

(9) The Fund's exposure to any single country (outside of the U.S.) will generally be limited to 20% of the Fund's net assets. The portion of the Fund's net assets that may be denominated in currencies other than the U.S. dollar is not expected to exceed 30%.

(10) In connection with its investments in high yield corporate bonds and senior loans, under normal market conditions, the Fund will seek to invest at least 75% of its net assets that are invested in such bonds and loans (in the aggregate) in bonds and loans that, at the time of original issuance, have at least \$100 million par amount outstanding.

(11) The Fund may invest up to 15% of its net assets in junior loans.

(12) The Fund will limit its investments in mortgage-backed

<sup>54</sup> 17 CFR 240.10A-3.



securities that are not issued or guaranteed by Government Entities to 20% of its net assets.

(13) Under normal market conditions, the Fund will seek to invest at least 75% of its net assets that are invested in preferred securities in preferred securities that have a minimum initial issuance amount of at least \$100 million. Initially, at least 50% of the Fund's net assets that are invested in preferred securities will be invested in exchange-listed preferred securities, although this percentage may decrease in the future.

(14) Under normal market conditions, at least 80% of the Sovereign Debt in which the Fund invests will be issued by issuers with outstanding debt of at least \$200 million (or the foreign currency equivalent thereof).

(15) Not including the Option Overlay Strategy, no more than 20% of the value of the Fund's net assets will be invested in derivative instruments. The Fund will only enter into transactions in derivative instruments with counterparties that the Adviser and/or the applicable Management Team reasonably believes are capable of performing under the applicable contract. The Fund's investments in derivative instruments will be consistent with the Fund's investment objectives and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of an index.

(16) 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<sup>55</sup> 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,<sup>56</sup> that the proposed rule change (SR-NASDAQ-2014-050) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>57</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72501; File No. SR-NYSE-2014-31]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 86 To Extend the Hours for the Core Bond Trading Session for NYSE Bonds<sup>SM</sup> and Amending Rule 88 To Make Corresponding Changes Related to Bonds Liquidity Providers

July 1, 2014.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that June 25, 2014, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 86 to extend the hours for the Core Bond Trading Session for NYSE Bonds<sup>SM</sup> and to amend Rule 88 to make corresponding changes related to Bonds Liquidity Providers ("BLPs"). The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change

and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

##### 1. Purpose

The Exchange proposes to amend Rule 86 to extend the hours for the Core Bond Trading Session for NYSE Bonds and to amend Rule 88 to make corresponding changes related to BLPs.<sup>4</sup>

NYSE Bonds is the Exchange's electronic system for receiving, processing, executing, and reporting bids, offers, and executions in bonds. Rule 86 prescribes how bonds are traded through the NYSE Bonds trading platform, including the receipt, execution, and reporting of bond transactions. Rule 88 provides for BLPs, which are member organizations that electronically enter orders from off the Floor of the Exchange into NYSE Bonds.

NYSE Bonds has three Bond Trading Sessions: (1) the Opening Bond Trading Session, (2) the Core Bond Trading Session, and (3) the Late Bond Trading Session. The Opening Bond Trading Session currently commences at 4:00 a.m. Eastern Time ("ET") and concludes at 9:30 a.m. ET. The Core Bond Trading Session currently commences at 9:30 a.m. ET and concludes at 4:00 p.m. ET. The Late Bond Trading Session currently commences at 4:00 p.m. ET and concludes at 8:00 p.m. ET.

The Exchange proposes to extend the hours of the Core Bond Trading Session so that it would commence at 8:00 a.m. ET and end at 5:00 p.m. ET, adding a total of 2.5 hours to the Core Bond Trading Session and better aligning its hours with those of other bond trading venues. The Exchange proposes to amend the references to the various time periods throughout Rule 86 to effect this change, including, for example, that the Core Bond Auction would commence at 8:00 a.m. ET instead of the current 9:30 a.m. ET. The Exchange would announce the date on which the expanded Core Bond Trading Session hours would take effect via Trader Update. The Exchange notes, for example, that the proposed extended Core Bond Trading Session would also result in the ability for an "NYSE Bonds Good 'Til Cancelled

<sup>57</sup> 17 CFR 200.30-3(a)(12).

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

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

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

<sup>55</sup> 15 U.S.C. 78f(b)(5).

<sup>56</sup> 15 U.S.C. 78s(b)(2).

<sup>4</sup> Terms not defined herein shall have the meaning prescribed under Rule 86 or Rule 88, as applicable.