

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 46	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2014 - * 009 Amendment No. (req. for Amendments *) 2
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Filing by NASDAQ Stock Market  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Jonathan Last Name \* Cayne  
 Title \* Sr. Associate General Counsel  
 E-mail \* jonathan.cayne@nasdaqomx.com  
 Telephone \* (301) 978-8493 Fax (301) 978-8472

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 05/07/2014  
 By Edward S. Knight  
 Executive Vice President and General Counsel

(Name \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Persona Not Validated - 1383935917270,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”), is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change relating to the First Trust Tactical High Yield ETF (formerly known as the First Trust High Yield Long/Short ETF) (the “Fund”) of First Trust Exchange-Traded Fund IV (the “Trust”) listed under NASDAQ Rule 5735 (“Managed Fund Shares”). The shares of the Fund are collectively referred to herein as the “Shares.”

(b) and (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on July 17, 2013. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the rule change.

Questions regarding this rule filing may be directed to Jonathan F. Cayne, Senior Associate General Counsel, The NASDAQ OMX Group at (301) 978-8493 (telephone) or (301) 978-8472 (fax).

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

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

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

a. Purpose

The Exchange proposes to reflect changes to the means of achieving the investment objectives of the Fund.<sup>3</sup> The Commission has approved the listing and trading of Shares under NASDAQ Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange.<sup>4</sup> The Exchange believes the proposed rule change reflects no significant issues not previously addressed in the Prior Release. The Fund is an actively managed exchange-traded fund ("ETF"). The Shares are offered by the Trust, which was organized as a Massachusetts business trust on September 15, 2010. The Trust, which is registered with the Commission as an investment company, has filed a registration statement on Form N-1A ("Registration Statement") relating to the Fund with the Commission.<sup>5</sup> First Trust Advisors L.P. ("First Trust Advisors") is the

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<sup>3</sup> See Securities Exchange Act Release No. 68972 (February 22, 2013), 78 FR 13721 (February 28, 2013) (SR-NASDAQ-2012-147) (order approving listing and trading of First Trust High Yield Long/Short ETF).

<sup>4</sup> The Commission approved NASDAQ Rule 5735 (formerly Nasdaq Rule 4420(o)) in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR-NASDAQ-2008-039). The Commission previously approved the listing and trading of the Shares of the Fund. See Securities Exchange Act Release No. 68972 (February 22, 2013), 78 FR 13721 (February 28, 2013) (SR-NASDAQ-2012-147) ("Prior Order"). See also Securities Exchange Act Release No. 68581 (January 4, 2013), 78 FR 2295 (January 10, 2013) (SR-NASDAQ-2012-147) ("Prior Notice," and together with the Prior Order, the "Prior Release").

<sup>5</sup> See Post-Effective Amendment No. 60 to Registration Statement on Form N-1A for the Trust, dated February 28, 2014 (File Nos. 333-174332 and 811-22559). The descriptions of the Shares and the Fund contained herein are based, in part, on information in the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the Investment

investment adviser (“Adviser”) to the Fund.

The Exchange now proposes two modifications to the description of the measures the Adviser would utilize to implement the Fund’s investment objectives.<sup>6</sup> The Adviser also seeks to make the modifications described below to certain representations in the Prior Release.

The Adviser represents that there is no change to the Fund’s investment objectives. Except for the changes proposed herein, all other facts presented and representations made in the Rule 19b-4<sup>7</sup> filings underlying the Prior Release remain unchanged. The Fund would continue to comply with all initial and continued listing requirements under NASDAQ Rule 5735.

#### The Fund’s Investments in Bank Loans

First, the Exchange proposes to modify a representation reflected in the Prior Release by increasing the percentage of the Fund’s net assets that may be invested in bank loans. In accordance with the Prior Release, the Fund may invest up to 15% of its net assets in “bank loans,” which, as described in the Prior Release, may include loan interests that are not secured by any specific collateral of the borrower, loan interests that have a lower than first lien priority on collateral of the borrower, loans to foreign borrowers, loans in foreign currencies and other loans with characteristics that the Adviser believes qualify as bank loans. The Fund may invest in bank loans by

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Company Act of 1940 (the “1940 Act”). See Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812-13795) (the “Exemptive Order”).

<sup>6</sup> The Adviser represents that it has managed and will continue to manage the Fund in the manner described in the Prior Release, and will not implement the changes, as described herein, until the instant proposed rule change is operative.

<sup>7</sup> 17 CFR 240.19b-4.

purchasing assignments or all or a portion of loans or loan participations from third parties. Bank loans are made by or issued to corporations primarily to finance acquisitions, refinance existing debt, support organic growth, or pay out dividends, and are typically originated by large banks and then syndicated out to institutional investors as well as to other banks. Bank loans typically bear interest at a floating rate, although some loans pay a fixed rate.

Going forward, the Exchange proposes that the Fund would be permitted to invest up to 40% of its net assets in bank loans. However, the Fund would invest no more than 15% of its net assets in “junior loans” (as defined and described below), and all other bank loans in which the Fund would invest would be “senior loans” (as defined and described below).<sup>8</sup> At least 75% of the Fund’s net assets that are invested in bank loans would be invested in issuers that have a minimum principal amount outstanding of \$100 million or more with respect to U.S. issuers and \$200 million or more with respect to non-U.S. issuers.

The term “senior loans,” as used herein, refers to first lien senior secured floating rate bank loans. The Fund generally invests, and will continue to invest, in senior loans that the Adviser deems to be liquid with readily available prices.

Although similar to high yield bonds in that they represent debt obligations of sub-investment grade corporate borrowers, senior loans differ from traditional high yield

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<sup>8</sup> The Commission previously has approved listing and trading on the Exchange and NYSE Arca, Inc. of issues of Managed Fund Shares that primarily hold senior loans. See Securities Exchange Release No. 69464 (April 26, 2013), 78 FR 25774 (SR-NASDAQ-2013-036) (order approving listing and trading of First Trust Senior Loan Fund under NASDAQ Rule 5735); and Securities Exchange Release No. 69244 (March 27, 2013), 78 FR 19766 (SR-NYSEArca-2013-08) (order approving listing and trading of SPDR Blackstone/GSO Senior Loan ETF under NYSE Arca Equities Rule 8.600).

bonds in several important respects. First, senior loans are typically senior to other obligations of the borrower and secured by the assets of the borrower. Senior loans rank at the top of a borrower's capital structure in terms of priority of payment, ahead of any subordinated debt (high yield) or the borrower's common equity. Senior loans are also secured, as the holders of these loans have a lien on most, if not all, of the corporate borrower's plant, property, equipment, receivables, cash balances, licenses, trademarks, etc. Furthermore, the corporate borrower of senior loans executes a credit agreement that typically restricts what it can do (debt incurrence, asset dispositions, etc.) without the lenders' approval, and, in addition, may require the borrower to meet certain ongoing financial covenants (EBITDA, leverage tests, etc.). Finally, as noted above, senior loans are generally floating rate obligations.

Institutional investors in senior loans access the market today primarily through commingled funds or separately managed accounts. Individual investors have gained exposure to senior loans primarily through registered open-end or closed-end funds and business development companies or occasionally through limited partnerships.<sup>9</sup>

According to Credit Suisse, the broad senior loan market (U.S. dollar-denominated non-investment grade bank debt, including both non-institutional (revolvers and pro-rata tranches) and institutional facilities), in terms of total outstanding loans by dollar volume, is approximately \$1.5 trillion (March 31, 2014), nearly equal in size to the high yield corporate bond market in the U.S., also as measured by Credit Suisse, at \$1.4 trillion (March 31, 2014). The institutional leveraged loan market (which includes U.S.

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<sup>9</sup> The Adviser believes that there are currently approximately 28 closed-end funds and 60 open-end funds that invest primarily in the senior loan market, with many other funds allocating a portion of their investments to such market.

dollar-denominated non-investment grade fully-drawn institutional term loans and is a subset of the overall leveraged loan market) is approximately \$819 billion (March 31, 2014). The market for senior loans is almost exclusively comprised of non-investment grade corporate borrowers. The Loan Syndication and Trading Association (“LSTA”), a trade group sponsored by both underwriters of and institutional investors in senior bank loans, has been tracking trading volumes and bid-offer spreads for the asset class since 2007. For the month ended February 28, 2014 – a representative period – \$41 billion of senior loans changed hands representing 1,350 individual transactions. (Source: LSTA.)

The Fund currently invests, and would continue to invest, primarily in the more liquid segment of the senior loan market. The most actively traded loans generally have a tranche size outstanding (or total float of the issue) in excess of \$250 million. The borrowers of these broadly syndicated loans are typically followed by many “buy-side” and “sell-side” credit analysts who, in turn, rely on the borrower to provide transparent financial information concerning its business performance and operating results. The Adviser represents that such borrowers typically provide significant financial transparency to the market through the delivery of financial statements on at least a quarterly basis as required by the executed credit agreements. Additionally, bids and offers in the senior loans are available throughout the trading day on larger issues of senior loans with multiple dealer quotes available. Dealers also update their “trading runs” of senior loans throughout the day and distribute these via electronic messaging to the institutional investor community. In addition, senior loan investors can obtain information on senior loans and their borrowers from numerous public sources, including Bloomberg, FactSet, public financial statement filings (Forms 10-K and 10-Q), and sell



side research analysts.

The Adviser represents that the underwriters, or agent banks, which distribute, syndicate and trade senior loans are among the largest global financial institutions, including JPMorgan, Bank of America, Citigroup, Goldman Sachs, Morgan Stanley, Wells Fargo, Deutsche Bank, Barclays, Credit Suisse and others. It is common for multiple firms to act as underwriters and market makers for a specific senior loan issue. For example, two underwriters may co-underwrite and fund a senior loan that has a \$1 billion institutional tranche. One of the underwriters, acting as syndication agent for the financing, will then draft an offering memorandum (similar to a prospectus for an initial public offering of equity securities), distribute it to potential investors, schedule management meetings with the largest loan investors and arrange a bank meeting that includes management presentations along with a question and answer session. The investor audience attends in person as well as via telephone with both live and recorded conference call options. After a syndication process, often times two weeks in length, where investors can complete their due diligence work with access to company management and underwriter bankers to answer credit questions, investors' commitments are collected by the underwriter. The underwriter will typically allocate the loan to 80-120 investors within the following week, with the largest position representing 3-5% of the tranche size in a successful syndication. Banks also have senior loan trading desks that make secondary bid/ask markets in the loans after they are allocated.

Under the proposed rule change, the Fund would be permitted to invest up to 15% of its net assets (in the aggregate) in loan interests that are not secured by any specific collateral of the borrower and loan interests that have a lower than first lien priority on

collateral of the borrower (collectively referred to as “junior loans”).<sup>10</sup> 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. In this respect, they are similar to a high yield bond. Accordingly, due to their subordination in the borrower’s capital structure, junior loans involve a higher degree of overall risk than senior loans of the same borrower.

This proposed change is intended to provide greater flexibility to the Adviser as it tactically allocates proceeds across the high yield debt market and across the debt capital structure of select companies. Additionally, this proposed change would provide the Adviser with increased flexibility to manage the Fund’s duration in periods of rising rates. The Adviser represents that the Fund would continue to invest 85% or more of the portfolio in securities that the Adviser deems to be sufficiently liquid at the time of investment in accordance with Commission guidance. In addition, consistent with the Prior Release, the Adviser would continue to monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained.

#### The Fund’s Use of Derivative Instruments

Second, the Exchange proposes to delete a representation reflected in the Prior Release, which states that consistent with the Exemptive Order, the Fund would not invest in options contracts, futures contracts or swap agreements (the “Derivatives Representation”).

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<sup>10</sup> As a point of clarification, the Fund may currently invest up to 15% of its net assets in junior loans; however, if the Fund invested 15% of its net assets in junior loans, it could not currently invest in any additional bank loans.

On December 6, 2012, the staff of the Commission's Division of Investment Management ("Division") issued a no-action letter ("No-Action Letter") relating to the use of derivatives by actively-managed ETFs.<sup>11</sup> The No-Action Letter noted that, in March of 2010, the Commission announced in a press release that the staff was conducting a review to evaluate the use of derivatives by mutual funds, ETFs, and other investment companies and that, pending completion of this review, the staff would defer consideration of exemptive requests under the 1940 Act relating to, among others, actively-managed ETFs that would make significant investments in derivatives.

The No-Action Letter stated that the Division staff will no longer defer consideration of exemptive requests under the 1940 Act relating to actively-managed ETFs that make use of derivatives provided that they include representations to address some of the concerns expressed in the Commission's March 2010 press release. These representations are: (i) that the ETF's board periodically will review and approve the ETF's use of derivatives and how the ETF's investment adviser assesses and manages risk with respect to the ETF's use of derivatives; and (ii) that the ETF's disclosure of its use of derivatives in its offering documents and periodic reports is consistent with relevant Commission and staff guidance (together, the "No-Action Letter Representations"). The No-Action Letter stated that the Division would not recommend enforcement action to the Commission under sections 2(a)(32), 5(a)(1), 17(a), 22(d), and 22(e) of the 1940 Act, or rule 22c-1 under the 1940 Act if actively-managed ETFs

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<sup>11</sup> See No-Action Letter dated December 6, 2012 from Elizabeth G. Osterman, Associate Director, Office of Exemptive Applications, Division of Investment Management.

operating in reliance on specified orders (which include the Trust's Exemptive Order<sup>12</sup>) invest in options contracts, futures contracts or swap agreements provided that they comply with the No-Action Letter Representations.<sup>13</sup>

In view of the No-Action Letter, the Exchange is proposing to delete the Derivatives Representation. The Exchange now proposes that, to pursue its investment objectives, the Fund be permitted to invest in U.S. exchange-traded options on futures contracts and U.S. exchange-traded futures contracts (collectively, "Derivative Instruments"). The use of Derivative Instruments may allow the Fund to seek to enhance return, to hedge some of the risks of its investments in securities, as a substitute for a position in an 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 preserve capital or to manage its foreign currency exposures.<sup>14</sup> Under normal market conditions, no more than 30% of the value of the Fund's net assets would be invested in Derivative

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<sup>12</sup> See footnote 5.

<sup>13</sup> The Adviser acknowledges that for the Fund to rely on the No-Action Letter, the Fund must comply with the No-Action Letter Representations. In this regard, the Adviser represents that (i) it would request that the Board of Trustees of the Trust (the "Trust Board") periodically review and approve the Fund's use of derivatives and how the Adviser assesses and manages risk with respect to the Fund's use of derivatives and (ii) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports would be consistent with relevant Commission and staff guidance.

<sup>14</sup> The Adviser currently expects that, initially, all of the futures contracts and options on futures contracts that the Fund buys and/or sells would be futures and options on futures, respectively, on U.S. Treasury obligations. In particular, the Adviser contemplates that the Fund would sell futures on U.S. Treasury obligations as an alternative to engaging in short sales to gain short exposure to the U.S. Treasury market.

Instruments.<sup>15</sup> In addition, at least 90% of the Fund's net assets that would be invested in Derivative Instruments would be invested in Derivative Instruments 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>16</sup>

The Prior Release stated that the Fund's investments would not be used to enhance leverage. In view of the Exchange's proposal to permit the Fund to use Derivative Instruments, the Fund's investments in Derivative Instruments could potentially be used to enhance leverage. However, the Fund's investments in Derivative Instruments would be consistent with the Fund's investment objectives and would not be used to seek to achieve a multiple or inverse multiple of an index.

Investments in Derivative Instruments would be made in accordance with the 1940 Act and consistent with the Fund's investment objectives and policies. The Fund would comply with the regulatory requirements of the Commission to maintain assets as "cover," maintain segregated accounts, and/or make margin payments when it takes

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<sup>15</sup> The Fund would limit its direct investments in futures and options on futures to the extent necessary for the Adviser 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 would 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>16</sup> See footnote 21.

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 would 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.<sup>17</sup>

The Fund would include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of Derivative Instruments, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.<sup>18</sup>

Based on the above, the Exchange seeks this modification regarding the Fund's use of Derivative Instruments. The Adviser believes that the ability to invest in U.S. exchange-traded options on futures contracts and U.S. exchange-traded futures contracts would provide it with additional flexibility to meet the Fund's investment objectives.

#### Valuation for Purposes of Calculating Net Asset Value

As indicated in the Prior Release, the net asset value ("NAV") of the Fund's Shares generally is calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m. Eastern time. The NAV per Share is calculated by dividing the Fund's net assets by the number of Shares

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<sup>17</sup> With respect to guidance under the 1940 Act, see 15 U.S.C. 80a-18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); Dreyfus Strategic Investing, Commission No-Action Letter (June 22, 1987); Merrill Lynch Asset Management, L.P., Commission No-Action Letter (July 2, 1996).

<sup>18</sup> To mitigate leveraging risk, the Fund would segregate or "earmark" liquid assets or otherwise cover the transactions that may give rise to such risk.

outstanding.

For purposes of calculating NAV, the Fund's investments are valued daily at market value or, in the absence of market value with respect to any such investment, at fair value, in each case in accordance with valuation procedures (which may be revised from time to time) adopted by the Trust Board (the "Valuation Procedures") and in accordance with the 1940 Act. All valuations are subject to review by the Trust Board or its delegate. A market valuation generally means a valuation (i) obtained from an exchange, an independent pricing service ("Pricing Service"), or a major market maker (or dealer) or (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a Pricing Service, or a major market maker (or dealer). The information summarized below is based on the Valuation Procedures as currently in effect; however, as noted above, the Valuation Procedures are amended from time to time and, therefore, such information is subject to change.

The Derivative Instruments held by the Fund would consist of U.S. exchange-traded futures contracts and U.S. exchange-traded options on futures contracts and, as such, would typically be valued at the closing price in the market where such instruments are principally traded.

Typically, bank loans are valued using information provided by a Pricing Service. The Pricing Service primarily uses over-the-counter pricing from dealer runs and broker quotes from indicative sheets to value the bank loans. In addition, with respect to the valuation of bank loans, as part of its review, the Adviser's pricing committee ("Pricing Committee") may, in certain limited circumstances, override a value provided by the Pricing Service. If the Pricing Service does not provide a valuation for a particular bank

loan, or if the Pricing Committee overrides a value of the bank loan, the bank loan is valued using fair value pricing, as described below.

Certain securities may not be able to be priced by pre-established pricing methods. Such securities may be valued by the Trust Board or its delegate at fair value. The use of fair value pricing by the Fund is governed by the Valuation Procedures and conducted in accordance with the provisions of the 1940 Act. As a general principle, the current “fair value” of a security would appear to be the amount which the owner might reasonably expect to receive for the security upon its current sale. The use of fair value prices by the Fund generally results in prices used by the Fund that may differ from current market valuations or official closing prices on the applicable exchange. A variety of factors may be considered in determining the fair value of such securities.

Because foreign securities exchanges may be open on different days than the days during which an investor may purchase or sell Shares, the value of the Fund’s securities may change on days when investors are not able to purchase or sell Shares. Bank loans denominated in foreign currencies are translated into U.S. dollars at the exchange rate of such currencies against the U.S. dollar as provided by a Pricing Service. The value of bank loans denominated in foreign currencies is converted into U.S. dollars at the exchange rates in effect at the time of valuation.

#### Availability of Information

As described in the Prior Release, on each business day, before commencement of trading in the Regular Market Session on the Exchange, the Trust discloses on its website<sup>19</sup> the identities and quantities of the portfolio of securities and other assets (the

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<sup>19</sup> The Trust and the Fund have the same website ([i.e., www.ftportfolios.com](http://www.ftportfolios.com)).



“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. See “Disclosed Portfolio” below.

In addition, as described in the Prior Release, the “Intraday Indicative Value” (defined in NASDAQ Rule 5735(c)(3)), based on the current value for the components of the Disclosed Portfolio is updated and widely disseminated and broadly displayed at least every 15 seconds during the Regular Market session. For the purposes of determining the Intraday Indicative Value, the Fund’s holdings in Derivative Instruments, which would be exchange-traded derivatives, would be valued intraday using the relevant exchange data.

The Prior Release stated that intra-day, executable price quotations of the fixed income securities and other assets held by the Fund would be available from major broker-dealer firms or on the exchange on which they are traded, if applicable. The Prior Release also stated that intra-day price information would be available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.

The Derivative Instruments in which the Fund proposes to invest would be U.S. exchange-traded. Accordingly, consistent with the above, pricing information for the Derivative Instruments would be available from major broker-dealer firms, on the exchanges on which they are traded and through subscription services. Further, pricing information for the bank loans in which the Fund invests would continue to be available from major broker-dealer firms and subscription services, consistent with and as described above.

#### Disclosed Portfolio

The Fund's disclosure of derivative positions in the Disclosed Portfolio would include information that market participants can use to value these positions intraday. On a daily basis, the Fund would disclose on the Fund's website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio.

#### Surveillance

The Exchange represents that trading in the Shares would continue to be subject to the existing trading surveillances, administered by both NASDAQ and also the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>20</sup> The Exchange 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 applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and

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<sup>20</sup> FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the Derivative Instruments with other markets or other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and the Derivative Instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the Derivative Instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>21</sup> Moreover, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

b. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>22</sup> in general and Section 6(b)(5) of the Act<sup>23</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

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<sup>21</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). As stated in the Prior Release, the Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>22</sup> 15 U.S.C. 78f.

<sup>23</sup> 15 U.S.C. 78f(b)(5).

principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule changes are designed to prevent fraudulent and manipulative acts and practices in that the Shares would continue to be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NASDAQ Rule 5735. The first proposed rule change would permit the Fund to invest up to 40% (rather than up to 15%) of its net assets in bank loans; however, the Adviser represents that the Fund would continue to invest 85% or more of its portfolio in securities that the Adviser deems to be sufficiently liquid at the time of investment in accordance with Commission guidance and would continue to monitor portfolio liquidity on an ongoing basis. Additionally the Fund would invest no more than 15% of its net assets in junior loans. At least 75% of the Fund's net assets that are invested in bank loans would be invested in issuers that have a minimum principal amount outstanding of \$100 million or more with respect to U.S. issuers and \$200 million or more with respect to non-U.S. issuers.

The second proposed rule change is consistent with the No-Action Letter and, provided that the Fund satisfies the No-Action Letter Representations, would permit the Fund to invest in U.S. exchange-traded options on futures contracts and U.S. exchange-traded futures contracts. Under normal market conditions, no more than 30% of the value of the Fund's net assets would be invested in Derivative Instruments. The Fund's investments in Derivative Instruments would be consistent with the Fund's investment objectives and would not be used to seek to achieve a multiple or inverse

multiple of an index. Investments in Derivative Instruments would be made in accordance with the 1940 Act and consistent with the Fund's investment objectives and policies.

The Derivative Instruments held by the Fund would consist of U.S. exchange-traded futures contracts and U.S. exchange-traded options on futures contracts and, as such, would typically be valued at the closing price in the market where such instruments are principally traded. At least 90% of the Fund's net assets that would be invested in Derivative Instruments would be invested in Derivative Instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

The proposed rule changes are designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Adviser represents that there is no change to the Fund's investment objectives. The Adviser represents that the purpose of the proposed changes is to provide it with greater flexibility in meeting the Fund's investment objectives by permitting (1) the Fund to invest a greater portion of its net assets in bank loans and (2) the Fund to invest a portion of its net assets in Derivative Instruments. In addition, consistent with the Prior Release, NAV per Share would continue to be calculated daily and the NAV and Disclosed Portfolio would be made available to all market participants at the same time. On a daily basis, the Fund would disclose on the Fund's website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security or other asset or instrument underlying the holding, if any; for options, the

option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an actively managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

As noted above, the additional flexibility to be afforded to the Adviser under the proposed rule change is intended to enhance the Adviser's ability to meet the Fund's investment objectives. Further, as noted in the Prior Release and in the proposed rule change the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as indicated in the Prior Release and in the proposed rule change, investors would have ready access to information regarding the Fund's holdings (including Derivative Instruments), the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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

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

of the Act. The Exchange believes the proposed rule change will permit the Adviser additional flexibility in achieving the Fund's investment objectives, thereby offering investors additional investment options.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of the proposed rule change for publication in the Federal Register.

**EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NASDAQ-2014-009)

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Proposed Rule Change and Relating to the Listing and Trading of the Shares of the First Tactical High Yield ETF of First Trust Exchange-Traded Fund IV

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 7, 2014, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. 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

Nasdaq proposes to list and trade the shares of the First Trust Tactical High Yield ETF (formerly known as the First Trust High Yield Long/Short ETF) (the “Fund”) of First Trust Exchange-Traded Fund IV (the “Trust”) under Nasdaq Rule 5735 (“Managed Fund Shares”). The shares of the Fund are collectively referred to herein as the “Shares.”

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at Nasdaq’s principal office, 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, Nasdaq included statements concerning the

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

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



purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

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

1. Purpose

The Exchange proposes to reflect changes to the means of achieving the investment objectives of the Fund.<sup>3</sup> The Commission has approved the listing and trading of Shares under NASDAQ Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange.<sup>4</sup> The Exchange believes the proposed rule change reflects no significant issues not previously addressed in the Prior Release. The Fund is an actively managed exchange-traded fund ("ETF"). The Shares are offered by the Trust, which was organized as a Massachusetts business trust on September 15, 2010. The Trust, which is registered with the Commission as an investment company, has filed a registration statement on Form N-1A ("Registration Statement") relating to the Fund

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<sup>3</sup> See Securities Exchange Act Release No. 68972 (February 22, 2013), 78 FR 13721 (February 28, 2013) (SR-NASDAQ-2012-147) (order approving listing and trading of First Trust High Yield Long/Short ETF).

<sup>4</sup> The Commission approved NASDAQ Rule 5735 (formerly Nasdaq Rule 4420(o)) in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR-NASDAQ-2008-039). The Commission previously approved the listing and trading of the Shares of the Fund. See Securities Exchange Act Release No. 68972 (February 22, 2013), 78 FR 13721 (February 28, 2013) (SR-NASDAQ-2012-147) ("Prior Order"). See also Securities Exchange Act Release No. 68581 (January 4, 2013), 78 FR 2295 (January 10, 2013) (SR-NASDAQ-2012-147) ("Prior Notice," and together with the Prior Order, the "Prior Release").

with the Commission.<sup>5</sup> First Trust Advisors L.P. (“First Trust Advisors”) is the investment adviser (“Adviser”) to the Fund.

The Exchange now proposes two modifications to the description of the measures the Adviser would utilize to implement the Fund’s investment objectives.<sup>6</sup> The Adviser also seeks to make the modifications described below to certain representations in the Prior Release.

The Adviser represents that there is no change to the Fund’s investment objectives. Except for the changes proposed herein, all other facts presented and representations made in the Rule 19b-4<sup>7</sup> filings underlying the Prior Release remain unchanged. The Fund would continue to comply with all initial and continued listing requirements under NASDAQ Rule 5735.

#### The Fund’s Investments in Bank Loans

First, the Exchange proposes to modify a representation reflected in the Prior Release by increasing the percentage of the Fund’s net assets that may be invested in bank loans. In accordance with the Prior Release, the Fund may invest up to 15% of its net assets in “bank loans,” which, as described in the Prior Release, may include loan

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<sup>5</sup> See Post-Effective Amendment No. 60 to Registration Statement on Form N-1A for the Trust, dated February 28, 2014 (File Nos. 333-174332 and 811-22559). The descriptions of the Shares and the Fund contained herein are based, in part, on information in the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (the “1940 Act”). See Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812-13795) (the “Exemptive Order”).

<sup>6</sup> The Adviser represents that it has managed and will continue to manage the Fund in the manner described in the Prior Release, and will not implement the changes, as described herein, until the instant proposed rule change is operative.

<sup>7</sup> 17 CFR 240.19b-4.

interests that are not secured by any specific collateral of the borrower, loan interests that have a lower than first lien priority on collateral of the borrower, loans to foreign borrowers, loans in foreign currencies and other loans with characteristics that the Adviser believes qualify as bank loans. The Fund may invest in bank loans by purchasing assignments or all or a portion of loans or loan participations from third parties. Bank loans are made by or issued to corporations primarily to finance acquisitions, refinance existing debt, support organic growth, or pay out dividends, and are typically originated by large banks and then syndicated out to institutional investors as well as to other banks. Bank loans typically bear interest at a floating rate, although some loans pay a fixed rate.

Going forward, the Exchange proposes that the Fund would be permitted to invest up to 40% of its net assets in bank loans. However, the Fund would invest no more than 15% of its net assets in “junior loans” (as defined and described below), and all other bank loans in which the Fund would invest would be “senior loans” (as defined and described below).<sup>8</sup> At least 75% of the Fund’s net assets that are invested in bank loans would be invested in issuers that have a minimum principal amount outstanding of \$100 million or more with respect to U.S. issuers and \$200 million or more with respect to non-U.S. issuers.

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<sup>8</sup> The Commission previously has approved listing and trading on the Exchange and NYSE Arca, Inc. of issues of Managed Fund Shares that primarily hold senior loans. See Securities Exchange Release No. 69464 (April 26, 2013), 78 FR 25774 (SR-NASDAQ-2013-036) (order approving listing and trading of First Trust Senior Loan Fund under NASDAQ Rule 5735); and Securities Exchange Release No. 69244 (March 27, 2013), 78 FR 19766 (SR-NYSEArca-2013-08) (order approving listing and trading of SPDR Blackstone/GSO Senior Loan ETF under NYSE Arca Equities Rule 8.600).

The term “senior loans,” as used herein, refers to first lien senior secured floating rate bank loans. The Fund generally invests, and will continue to invest, in senior loans that the Adviser deems to be liquid with readily available prices.

Although similar to high yield bonds in that they represent debt obligations of sub-investment grade corporate borrowers, senior loans differ from traditional high yield bonds in several important respects. First, senior loans are typically senior to other obligations of the borrower and secured by the assets of the borrower. Senior loans rank at the top of a borrower’s capital structure in terms of priority of payment, ahead of any subordinated debt (high yield) or the borrower’s common equity. Senior loans are also secured, as the holders of these loans have a lien on most, if not all, of the corporate borrower’s plant, property, equipment, receivables, cash balances, licenses, trademarks, etc. Furthermore, the corporate borrower of senior loans executes a credit agreement that typically restricts what it can do (debt incurrence, asset dispositions, etc.) without the lenders’ approval, and, in addition, may require the borrower to meet certain ongoing financial covenants (EBITDA, leverage tests, etc.). Finally, as noted above, senior loans are generally floating rate obligations.

Institutional investors in senior loans access the market today primarily through commingled funds or separately managed accounts. Individual investors have gained exposure to senior loans primarily through registered open-end or closed-end funds and business development companies or occasionally through limited partnerships.<sup>9</sup>

According to Credit Suisse, the broad senior loan market (U.S. dollar-

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<sup>9</sup> The Adviser believes that there are currently approximately 28 closed-end funds and 60 open-end funds that invest primarily in the senior loan market, with many other funds allocating a portion of their investments to such market.

denominated non-investment grade bank debt, including both non-institutional (revolvers and pro-rata tranches) and institutional facilities), in terms of total outstanding loans by dollar volume, is approximately \$1.5 trillion (March 31, 2014), nearly equal in size to the high yield corporate bond market in the U.S., also as measured by Credit Suisse, at \$1.4 trillion (March 31, 2014). The institutional leveraged loan market (which includes U.S. dollar-denominated non-investment grade fully-drawn institutional term loans and is a subset of the overall leveraged loan market) is approximately \$819 billion (March 31, 2014). The market for senior loans is almost exclusively comprised of non-investment grade corporate borrowers. The Loan Syndication and Trading Association (“LSTA”), a trade group sponsored by both underwriters of and institutional investors in senior bank loans, has been tracking trading volumes and bid-offer spreads for the asset class since 2007. For the month ended February 28, 2014 – a representative period – \$41 billion of senior loans changed hands representing 1,350 individual transactions. (Source: LSTA.)

The Fund currently invests, and would continue to invest, primarily in the more liquid segment of the senior loan market. The most actively traded loans generally have a tranche size outstanding (or total float of the issue) in excess of \$250 million. The borrowers of these broadly syndicated loans are typically followed by many “buy-side” and “sell-side” credit analysts who, in turn, rely on the borrower to provide transparent financial information concerning its business performance and operating results. The Adviser represents that such borrowers typically provide significant financial transparency to the market through the delivery of financial statements on at least a quarterly basis as required by the executed credit agreements. Additionally, bids and offers in the senior loans are available throughout the trading day on larger issues of

senior loans with multiple dealer quotes available. Dealers also update their “trading runs” of senior loans throughout the day and distribute these via electronic messaging to the institutional investor community. In addition, senior loan investors can obtain information on senior loans and their borrowers from numerous public sources, including Bloomberg, FactSet, public financial statement filings (Forms 10-K and 10-Q), and sell side research analysts.

The Adviser represents that the underwriters, or agent banks, which distribute, syndicate and trade senior loans are among the largest global financial institutions, including JPMorgan, Bank of America, Citigroup, Goldman Sachs, Morgan Stanley, Wells Fargo, Deutsche Bank, Barclays, Credit Suisse and others. It is common for multiple firms to act as underwriters and market makers for a specific senior loan issue. For example, two underwriters may co-underwrite and fund a senior loan that has a \$1 billion institutional tranche. One of the underwriters, acting as syndication agent for the financing, will then draft an offering memorandum (similar to a prospectus for an initial public offering of equity securities), distribute it to potential investors, schedule management meetings with the largest loan investors and arrange a bank meeting that includes management presentations along with a question and answer session. The investor audience attends in person as well as via telephone with both live and recorded conference call options. After a syndication process, often times two weeks in length, where investors can complete their due diligence work with access to company management and underwriter bankers to answer credit questions, investors’ commitments are collected by the underwriter. The underwriter will typically allocate the loan to 80-120 investors within the following week, with the largest position representing 3-5%

of the tranche size in a successful syndication. Banks also have senior loan trading desks that make secondary bid/ask markets in the loans after they are allocated.

Under the proposed rule change, the Fund would be permitted to invest up to 15% of its net assets (in the aggregate) in loan interests that are not secured by any specific collateral of the borrower and loan interests that have a lower than first lien priority on collateral of the borrower (collectively referred to as “junior loans”).<sup>10</sup> 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. In this respect, they are similar to a high yield bond. Accordingly, due to their subordination in the borrower’s capital structure, junior loans involve a higher degree of overall risk than senior loans of the same borrower.

This proposed change is intended to provide greater flexibility to the Adviser as it tactically allocates proceeds across the high yield debt market and across the debt capital structure of select companies. Additionally, this proposed change would provide the Adviser with increased flexibility to manage the Fund’s duration in periods of rising rates. The Adviser represents that the Fund would continue to invest 85% or more of the portfolio in securities that the Adviser deems to be sufficiently liquid at the time of investment in accordance with Commission guidance. In addition, consistent with the Prior Release, the Adviser would continue to monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained.

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<sup>10</sup> As a point of clarification, the Fund may currently invest up to 15% of its net assets in junior loans; however, if the Fund invested 15% of its net assets in junior loans, it could not currently invest in any additional bank loans.

### The Fund's Use of Derivative Instruments

Second, the Exchange proposes to delete a representation reflected in the Prior Release, which states that consistent with the Exemptive Order, the Fund would not invest in options contracts, futures contracts or swap agreements (the "Derivatives Representation").

On December 6, 2012, the staff of the Commission's Division of Investment Management ("Division") issued a no-action letter ("No-Action Letter") relating to the use of derivatives by actively-managed ETFs.<sup>11</sup> The No-Action Letter noted that, in March of 2010, the Commission announced in a press release that the staff was conducting a review to evaluate the use of derivatives by mutual funds, ETFs, and other investment companies and that, pending completion of this review, the staff would defer consideration of exemptive requests under the 1940 Act relating to, among others, actively-managed ETFs that would make significant investments in derivatives.

The No-Action Letter stated that the Division staff will no longer defer consideration of exemptive requests under the 1940 Act relating to actively-managed ETFs that make use of derivatives provided that they include representations to address some of the concerns expressed in the Commission's March 2010 press release. These representations are: (i) that the ETF's board periodically will review and approve the ETF's use of derivatives and how the ETF's investment adviser assesses and manages risk with respect to the ETF's use of derivatives; and (ii) that the ETF's disclosure of its use of derivatives in its offering documents and periodic reports is consistent with

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<sup>11</sup> See No-Action Letter dated December 6, 2012 from Elizabeth G. Osterman, Associate Director, Office of Exemptive Applications, Division of Investment Management.



relevant Commission and staff guidance (together, the “No-Action Letter Representations”). The No-Action Letter stated that the Division would not recommend enforcement action to the Commission under sections 2(a)(32), 5(a)(1), 17(a), 22(d), and 22(e) of the 1940 Act, or rule 22c-1 under the 1940 Act if actively-managed ETFs operating in reliance on specified orders (which include the Trust’s Exemptive Order<sup>12</sup>) invest in options contracts, futures contracts or swap agreements provided that they comply with the No-Action Letter Representations.<sup>13</sup>

In view of the No-Action Letter, the Exchange is proposing to delete the Derivatives Representation. The Exchange now proposes that, to pursue its investment objectives, the Fund be permitted to invest in U.S. exchange-traded options on futures contracts and U.S. exchange-traded futures contracts (collectively, “Derivative Instruments”). The use of Derivative Instruments may allow the Fund to seek to enhance return, to hedge some of the risks of its investments in securities, as a substitute for a position in an 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 preserve

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<sup>12</sup> See footnote 5.

<sup>13</sup> The Adviser acknowledges that for the Fund to rely on the No-Action Letter, the Fund must comply with the No-Action Letter Representations. In this regard, the Adviser represents that (i) it would request that the Board of Trustees of the Trust (the “Trust Board”) periodically review and approve the Fund’s use of derivatives and how the Adviser assesses and manages risk with respect to the Fund’s use of derivatives and (ii) the Fund’s disclosure of its use of derivatives in its offering documents and periodic reports would be consistent with relevant Commission and staff guidance.

capital or to manage its foreign currency exposures.<sup>14</sup> Under normal market conditions, no more than 30% of the value of the Fund's net assets would be invested in Derivative Instruments.<sup>15</sup> In addition, at least 90% of the Fund's net assets that would be invested in Derivative Instruments would be invested in Derivative Instruments 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>16</sup>

The Prior Release stated that the Fund's investments would not be used to enhance leverage. In view of the Exchange's proposal to permit the Fund to use Derivative Instruments, the Fund's investments in Derivative Instruments could potentially be used to enhance leverage. However, the Fund's investments in Derivative

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<sup>14</sup> The Adviser currently expects that, initially, all of the futures contracts and options on futures contracts that the Fund buys and/or sells would be futures and options on futures, respectively, on U.S. Treasury obligations. In particular, the Adviser contemplates that the Fund would sell futures on U.S. Treasury obligations as an alternative to engaging in short sales to gain short exposure to the U.S. Treasury market.

<sup>15</sup> The Fund would limit its direct investments in futures and options on futures to the extent necessary for the Adviser 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 would 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>16</sup> See footnote 21.

Instruments would be consistent with the Fund's investment objectives and would not be used to seek to achieve a multiple or inverse multiple of an index.

Investments in Derivative Instruments would be made in accordance with the 1940 Act and consistent with the Fund's investment objectives and policies. The Fund would 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 would 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.<sup>17</sup>

The Fund would include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of Derivative Instruments, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.<sup>18</sup>

Based on the above, the Exchange seeks this modification regarding the Fund's use of Derivative Instruments. The Adviser believes that the ability to invest in U.S. exchange-traded options on futures contracts and U.S. exchange-traded futures contracts

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<sup>17</sup> With respect to guidance under the 1940 Act, see 15 U.S.C. 80a-18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); Dreyfus Strategic Investing, Commission No-Action Letter (June 22, 1987); Merrill Lynch Asset Management, L.P., Commission No-Action Letter (July 2, 1996).

<sup>18</sup> To mitigate leveraging risk, the Fund would segregate or "earmark" liquid assets or otherwise cover the transactions that may give rise to such risk.

would provide it with additional flexibility to meet the Fund's investment objectives.

Valuation for Purposes of Calculating Net Asset Value

As indicated in the Prior Release, the net asset value ("NAV") of the Fund's Shares generally is calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m. Eastern time. The NAV per Share is calculated by dividing the Fund's net assets by the number of Shares outstanding.

For purposes of calculating NAV, the Fund's investments are valued daily at market value or, in the absence of market value with respect to any such investment, at fair value, in each case in accordance with valuation procedures (which may be revised from time to time) adopted by the Trust Board (the "Valuation Procedures") and in accordance with the 1940 Act. All valuations are subject to review by the Trust Board or its delegate. A market valuation generally means a valuation (i) obtained from an exchange, an independent pricing service ("Pricing Service"), or a major market maker (or dealer) or (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a Pricing Service, or a major market maker (or dealer). The information summarized below is based on the Valuation Procedures as currently in effect; however, as noted above, the Valuation Procedures are amended from time to time and, therefore, such information is subject to change.

The Derivative Instruments held by the Fund would consist of U.S. exchange-traded futures contracts and U.S. exchange-traded options on futures contracts and, as such, would typically be valued at the closing price in the market where such instruments are principally traded.

Typically, bank loans are valued using information provided by a Pricing Service. The Pricing Service primarily uses over-the-counter pricing from dealer runs and broker quotes from indicative sheets to value the bank loans. In addition, with respect to the valuation of bank loans, as part of its review, the Adviser's pricing committee ("Pricing Committee") may, in certain limited circumstances, override a value provided by the Pricing Service. If the Pricing Service does not provide a valuation for a particular bank loan, or if the Pricing Committee overrides a value of the bank loan, the bank loan is valued using fair value pricing, as described below.

Certain securities may not be able to be priced by pre-established pricing methods. Such securities may be valued by the Trust Board or its delegate at fair value. The use of fair value pricing by the Fund is governed by the Valuation Procedures and conducted in accordance with the provisions of the 1940 Act. As a general principle, the current "fair value" of a security would appear to be the amount which the owner might reasonably expect to receive for the security upon its current sale. The use of fair value prices by the Fund generally results in prices used by the Fund that may differ from current market valuations or official closing prices on the applicable exchange. A variety of factors may be considered in determining the fair value of such securities.

Because foreign securities exchanges may be open on different days than the days during which an investor may purchase or sell Shares, the value of the Fund's securities may change on days when investors are not able to purchase or sell Shares. Bank loans denominated in foreign currencies are translated into U.S. dollars at the exchange rate of such currencies against the U.S. dollar as provided by a Pricing Service. The value of bank loans denominated in foreign currencies is converted into U.S. dollars at the

exchange rates in effect at the time of valuation.

Availability of Information

As described in the Prior Release, on each business day, before commencement of trading in the Regular Market Session on the Exchange, the Trust discloses on its website<sup>19</sup> the identities and quantities of the portfolio of securities and other assets (the “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. See “Disclosed Portfolio” below.

In addition, as described in the Prior Release, the “Intraday Indicative Value” (defined in NASDAQ Rule 5735(c)(3)), based on the current value for the components of the Disclosed Portfolio is updated and widely disseminated and broadly displayed at least every 15 seconds during the Regular Market session. For the purposes of determining the Intraday Indicative Value, the Fund’s holdings in Derivative Instruments, which would be exchange-traded derivatives, would be valued intraday using the relevant exchange data.

The Prior Release stated that intra-day, executable price quotations of the fixed income securities and other assets held by the Fund would be available from major broker-dealer firms or on the exchange on which they are traded, if applicable. The Prior Release also stated that intra-day price information would be available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.

The Derivative Instruments in which the Fund proposes to invest would be U.S. exchange-traded. Accordingly, consistent with the above, pricing information for the

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<sup>19</sup> The Trust and the Fund have the same website (i.e., [www.ftportfolios.com](http://www.ftportfolios.com)).

Derivative Instruments would be available from major broker-dealer firms, on the exchanges on which they are traded and through subscription services. Further, pricing information for the bank loans in which the Fund invests would continue to be available from major broker-dealer firms and subscription services, consistent with and as described above.

#### Disclosed Portfolio

The Fund's disclosure of derivative positions in the Disclosed Portfolio would include information that market participants can use to value these positions intraday. On a daily basis, the Fund would disclose on the Fund's website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio.

#### Surveillance

The Exchange represents that trading in the Shares would continue to be subject to the existing trading surveillances, administered by both NASDAQ and also the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities

laws.<sup>20</sup> The Exchange 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 applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the Derivative Instruments with other markets or other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and the Derivative Instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the Derivative Instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>21</sup> Moreover, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

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<sup>20</sup> FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

<sup>21</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). As stated in the Prior Release, the Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.



In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>22</sup> in general and Section 6(b)(5) of the Act<sup>23</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule changes are designed to prevent fraudulent and manipulative acts and practices in that the Shares would continue to be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NASDAQ Rule 5735. The first proposed rule change would permit the Fund to invest up to 40% (rather than up to 15%) of its net assets in bank loans; however, the Adviser represents that the Fund would continue to invest 85% or more of its portfolio in securities that the Adviser deems to be sufficiently liquid at the time of investment in accordance with Commission guidance and would continue to monitor portfolio liquidity on an ongoing basis. Additionally the Fund would invest no more than 15% of its net assets in junior loans. At least 75% of the Fund's net assets that are invested in bank loans would be invested in issuers that have a minimum principal amount outstanding of \$100 million or more with respect to U.S. issuers and \$200 million or more with respect

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<sup>22</sup> 15 U.S.C. 78f.

<sup>23</sup> 15 U.S.C. 78f(b)(5).

to non-U.S. issuers.

The second proposed rule change is consistent with the No-Action Letter and, provided that the Fund satisfies the No-Action Letter Representations, would permit the Fund to invest in U.S. exchange-traded options on futures contracts and U.S. exchange-traded futures contracts. Under normal market conditions, no more than 30% of the value of the Fund's net assets would be invested in Derivative Instruments. The Fund's investments in Derivative Instruments would be consistent with the Fund's investment objectives and would not be used to seek to achieve a multiple or inverse multiple of an index. Investments in Derivative Instruments would be made in accordance with the 1940 Act and consistent with the Fund's investment objectives and policies.

The Derivative Instruments held by the Fund would consist of U.S. exchange-traded futures contracts and U.S. exchange-traded options on futures contracts and, as such, would typically be valued at the closing price in the market where such instruments are principally traded. At least 90% of the Fund's net assets that would be invested in Derivative Instruments would be invested in Derivative Instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

The proposed rule changes are designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Adviser represents that there is no change to the Fund's investment objectives. The Adviser represents that the purpose of the proposed changes is to provide it with greater flexibility in meeting the Fund's investment objectives by permitting (1) the Fund to invest a greater portion of its

net assets in bank loans and (2) the Fund to invest a portion of its net assets in Derivative Instruments. In addition, consistent with the Prior Release, NAV per Share would continue to be calculated daily and the NAV and Disclosed Portfolio would be made available to all market participants at the same time. On a daily basis, the Fund would disclose on the Fund's website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an actively managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

As noted above, the additional flexibility to be afforded to the Adviser under the proposed rule change is intended to enhance the Adviser's ability to meet the Fund's investment objectives. Further, as noted in the Prior Release and in the proposed rule change the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as indicated in the Prior Release and in the proposed rule change,

investors would have ready access to information regarding the Fund's holdings (including Derivative Instruments), the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will permit the Adviser additional flexibility in achieving the Fund's investment objectives, thereby offering investors additional investment options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with

the Act.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2014-009 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASDAQ-2014-009. This file number should be included on the subject line if e-mail 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 website <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 website 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 Nasdaq. 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-NASDAQ-2014-009 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>24</sup> 17 CFR 200.30-3(a)(12).