

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 99	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2020 - * 005	Amendment No. (req. for Amendments *)
Filing by The Nasdaq Stock Market LLC Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
			Rule	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<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 checked="" 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"/>			
Description				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="Proposes certain changes regarding investments of the First Trust TCW Opportunistic Fixed Income ETF shares of which are currently listed and traded on the Exchange under Nasdaq Rule 5735"/>				
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 *	<input type="text" value="Jonathan"/>	Last Name *	<input type="text" value="Cayne"/>	
Title *	<input type="text" value="Principal Associate General Counsel"/>			
E-mail *	<input type="text" value="jonathan.cayne@nasdaq.com"/>			
Telephone *	<input type="text" value="(301) 978-8493"/>	Fax	<input type="text"/>	
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	<input type="text" value="01/15/2020"/>	<input type="text" value="EVP and Chief Legal Counsel"/>		
By	<input type="text" value="John Zecca"/>	<input type="text"/>		
(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.				
<input type="button" value="john.zecca@nasdaq.com"/>				

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 the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² The Nasdaq Stock Market LLC (“Nasdaq” or the “Exchange”) proposes certain changes regarding investments of the First Trust TCW Opportunistic Fixed Income ETF, shares of which are currently listed and traded on the Exchange under Nasdaq Rule 5735 (“Managed Fund Shares”).

(b) Not applicable.

(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 September 25, 2019. 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 and comments on the proposed rule change may be directed to:

Jonathan F. Cayne
Principal Associate General Counsel
Nasdaq, Inc.
(301) 978-8493

¹ 15 U.S.C. 78s(b)(1).

² 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 certain changes, described below under “Application of Generic Listing Requirements”, regarding investments of the First Trust TCW Opportunistic Fixed Income ETF (“Fund”), shares (“Shares”) of which are currently listed and traded on the Exchange under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares³ on the Exchange. Shares of the Fund commenced trading on the Exchange on February 15, 2017 in accordance with the generic listing standards in Nasdaq Rule 5735.

The Shares are offered by First Trust Exchange-Traded Fund VIII (the “Trust”), which is registered with the Securities and Exchange Commission (“SEC” or “Commission”) as an open-end management investment company.⁴ The Fund is a series of the Trust.

³ A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

⁴ The Trust is registered under the 1940 Act. On December 30, 2019, the Trust filed with the Commission its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-210186 and 811-23147) (“Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812-13795).

First Trust Advisors L.P. is the investment adviser (“First Trust” or “Adviser”) to the Fund. TCW Investment Management Company LLC (“TCW” or the “Sub-Adviser”), serves as the Fund’s investment sub-adviser. First Trust Portfolios L.P. is the distributor (“Distributor”) for the Fund’s Shares. The Bank of New York Mellon acts as the administrator, custodian and transfer agent (“Custodian” or “Transfer Agent”) for the Fund.

Paragraph (g) of Nasdaq Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.⁵ In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund’s portfolio.

⁵ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

The Adviser and Sub-Adviser are not registered as broker-dealers. The Adviser is affiliated with First Trust Portfolios L.P., a broker-dealer, and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser or the Sub-Adviser becomes registered as a broker-dealer or 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 and maintain a fire wall with respect to relevant personnel and any broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

First Trust TCW Opportunistic Fixed Income ETF

Principal Investments

According to the Registration Statement, the investment objective of the Fund is to seek to maximize long-term total return. Under normal market conditions,⁶ the Fund

⁶ The term “normal market conditions” is defined in Nasdaq Rule 5735(c)(5). On a temporary basis, including for defensive purposes, during the initial invest-up period (i.e., the six-week period following the commencement of trading of Shares on the Exchange) and during periods of high cash inflows or outflows (i.e., rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of the Fund's net assets as of the opening of business on the first day of such periods), the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its

intends to invest at least 80% of its net assets (including investment borrowings) in a portfolio of “Fixed Income Securities” (described below).

In managing the Fund’s portfolio, the Sub-Adviser intends to attempt to focus the Fund’s portfolio holdings in areas of the fixed income market (based on quality, sector, coupon or maturity) that the Sub-Adviser believes to be relatively undervalued. Pursuant to this investment strategy, the Fund may invest in the following Fixed Income Securities, which may be represented by derivatives relating to such securities, as discussed below:

- securities issued or guaranteed by the U.S. government or its agencies, instrumentalities or U.S. government-sponsored entities (“U.S. government securities”);
- Treasury Inflation Protected Securities (“TIPS”);
- the following non-agency, non-government-sponsored entity (“GSE”) and privately-issued mortgage-related and other asset-backed securities: residential mortgage-backed securities (“RMBS”), commercial mortgage-backed securities (“CMBS”), asset-backed securities (“ABS”), and collateralized loan obligations (“CLOs” and, together with such RMBS, CMBS and

investment objective. The Fund may adopt a defensive strategy when the Adviser and/or the Sub-Adviser believes securities in which the Fund normally invests have elevated risks due to market, political or economic factors and in other extraordinary circumstances.

ABS “Private ABS/MBS”);⁷

- Agency RMBS, agency CMBS, and agency ABS;
- domestic corporate bonds;
- Fixed Income Securities issued by non-U.S. corporations and non-U.S. governments;
- bank loans, including first lien senior secured floating rate bank loans (“Senior Loans”), secured and unsecured loans, second lien or more junior loans, and bridge loans;
- fixed income convertible securities;
- fixed income preferred securities; and
- municipal bonds.

The Fund may invest in agency RMBS and CMBS by investing in to-be-announced transactions (“TBA Transactions”).

The Fund may hold cash and cash equivalents.⁸ In addition, the Fund may hold the following short-term instruments with maturities of three months or more: certificates of deposit; bankers’ acceptances; repurchase agreements and reverse repurchase agreements; bank time deposits; and commercial paper.

The Fund may enter into short sales of any securities in which the Fund may invest.

⁷ For avoidance of doubt, “Private ABS/MBS” as referenced herein are non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities as stated in Nasdaq Rule 5735(b)(1)(B)(v).

⁸ For purposes of this filing, cash equivalents are the short-term instruments with maturities of less than 3 months enumerated in Nasdaq Rule 5735(b)(1)(C).

The Fund may utilize exchange-listed and over-the-counter (“OTC”) traded derivatives instruments for duration/yield curve management and/or hedging purposes, for risk management purposes or as part of its investment strategies. The Fund will use derivative instruments primarily to hedge interest rate risk, actively manage interest rate exposure, hedge foreign currency risk and actively manage foreign currency exposure. The Fund may also use derivative instruments to enhance returns, as a substitute for, or to gain exposure to, a position in an underlying asset, to reduce transaction costs, to maintain full market exposure, to manage cash flows or to preserve capital. Derivatives may also be used to hedge risks associated with the Fund’s other portfolio investments. The Fund will not use derivative instruments to gain exposure to Private ABS/MBS, and derivative instruments linked to such securities will be used for hedging purposes only. Derivatives that the Fund may enter into are the following: futures on interest rates, currencies, Fixed Income Securities and fixed income indices; exchange-traded and OTC options on interest rates, currencies, Fixed Income Securities and fixed income indices; swap agreements on interest rates, currencies, Fixed Income Securities and fixed income indices; credit default swaps (“CDX”); and currency forward contracts.

Other Investments

While the Fund, under normal market conditions, invests at least 80% of its net assets in the Principal Investments described above, the Fund may invest its remaining assets in the following “Non-Principal Investments.”

The Fund may invest in exchange-traded common stock, exchange-traded preferred stock, and exchange-traded real estate investment trusts (“REITs”).

The Fund may invest in the securities of other investment companies registered

under the 1940 Act, including money market funds, exchange-traded funds (“ETFs”), open-end funds (other than money market funds and other ETFs), and U.S. exchange-traded closed-end funds.⁹

- The Fund may hold exchange-traded notes (“ETNs”).¹⁰
- The Fund may hold exchange-traded or OTC “Work Out Securities.”¹¹
- The Fund may hold exchange-traded or OTC equity securities issued

upon conversion of fixed income convertible securities.

Investment Restrictions

The Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. The Fund’s holdings in derivative instruments for hedging purposes would be excluded from the determination of compliance with this 2% limitation. The total gross notional value of the Fund’s holdings in derivative instruments used to gain exposure to a specific asset is limited to 2% of the Fund’s total assets.

⁹ For purposes of this filing, the term “ETFs” are Index Fund Shares (as described in Nasdaq Rule 5705(b)); Portfolio Depository Receipts (as described in Nasdaq Rule 5705(a)); and Managed Fund Shares (as described in Nasdaq Rule 5735). All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

¹⁰ For purposes of this filing, ETNs are Linked Securities (as described in Nasdaq Rule 5710). While the Fund may invest in inverse ETNs, the Fund will not invest in leveraged or inverse leveraged ETNs (e.g., 2X or -3X).

¹¹ For purposes of this filing, Work Out Securities are U.S. or foreign equity securities of any type acquired in connection with restructurings related to issuers of Fixed Income Securities held by the Fund. Work Out Securities are generally traded OTC, but may be traded on a U.S. or foreign exchange.

The Fund may invest up to 50% of its total assets in the aggregate in Private ABS/MBS, provided that the Fund (1) may not invest more than 30% of its total assets in non-agency RMBS; (2) may not invest more than 25% of its total assets in non-agency CMBS and CLOs; and (3) may not invest more than 25% of its total assets in non-agency ABS.

With respect to the Fund's investments in up to 30% of its total assets in Private ABS/MBS that exceed the 20% of the weight of the Fund's portfolio¹² that may be invested in Private ABS/MBS under Nasdaq Rule 5735(b)(1)(B)(v),¹³ the following restrictions will apply:

- Non-agency RMBS shall have a weighted average loan age of 84 months or more;
- Non-agency CMBS and CLOs shall have a weighted average loan age of 60 months or more; and
- Non-agency ABS shall have a weighted average loan age of 12 months or more.¹⁴

¹² See Securities Exchange Act Release No. 86399 (July 17, 2019), 84 FR 35446 (July 23, 2019) (SR-NASDAQ-2019-054) (approving an amendment to Nasdaq Rule 5735(b)(1)(B)(v) to delete the reference to the "fixed income portion of the" portfolio, such that non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities components of a portfolio may not account, in the aggregate, for more than 20% of the weight of the whole portfolio).

¹³ Nasdaq Rule 5735(b)(1)(B)(v) provides that non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the portfolio.

¹⁴ Information relating to weighted average loan age for non-agency RMBS, non-agency CMBS, CLOs and non-agency ABS is widely available from major market data vendors such as Bloomberg.

The Exchange proposes that up to 25% of the Fund's assets may be invested in OTC derivatives that are used to reduce currency, interest rate or credit risk arising from the Fund's investments (that is, "hedge"). The Fund's investments in OTC derivatives other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate or credit risk will be limited to 20% of the assets in the Fund's portfolio. For purposes of these percentage limitations on OTC derivatives, the weight of such OTC derivatives will be calculated as the aggregate gross notional value of such OTC derivatives.

The Fund's holdings of bank loans will not exceed 15% of the Fund's total assets, and the Fund's holdings of bank loans other than Senior Loans will not exceed 5% of the Fund's total assets.

The Fund's holdings in fixed income convertible securities and in equity securities issued upon conversion of such convertible securities will not exceed 10% of the Fund's total assets.

The Fund's holdings in Work Out Securities will not exceed 5% of the Fund's total assets.

The Fund will not invest in securities or other financial instruments that have not been described in this proposed rule change.

Other Restrictions

The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple

(e.g., 2X or -3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).¹⁵

Use of Derivatives by the Fund

The Fund may invest in the types of derivatives described in the "Principal Investments" section above for the purposes described in that section. Investments in derivative instruments will be made in accordance with the Fund's investment objective and policies.

To limit the potential risk associated with such transactions, the Fund will enter into offsetting transactions or segregate or " earmark " assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees (the "Trust Board"). In addition, the Fund has included 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 derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged. Because the markets for certain assets, or the assets themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure.

Impact on Arbitrage Mechanism

The Adviser and the Sub-Adviser believe there will be minimal, if any, impact to the arbitrage mechanism as a result of the Fund's use of derivatives and Private ABS/MBS. The Adviser and the Sub-Adviser understand that market makers and participants should be able to value derivatives and Private ABS/MBS as long as the

¹⁵ The Fund's broad-based securities benchmark index is the Bloomberg Barclays U.S. Aggregate Bond Index.

positions are disclosed with relevant information. The Adviser and the Sub-Adviser believe that the price at which Shares of the Fund trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem Shares of the Fund at their net asset value (“NAV”), which should ensure that Shares of the Fund will not trade at a material discount or premium in relation to their NAV.

The Adviser and Sub-Adviser do not believe there will be any significant impacts to the settlement or operational aspects of the Fund’s arbitrage mechanism due to the use of derivatives and Private ABS/MBS.

Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis at NAV¹⁶ only in large blocks of Shares (“Creation Units”) in transactions with authorized participants, generally including broker-dealers and large institutional investors (“Authorized Participants”). Creation Units generally will consist of 50,000 Shares. The size of a Creation Unit is subject to change. As described in the Registration Statement, the Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments (the “Creation Basket”).¹⁷ In addition, if there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments (which

¹⁶ The NAV of the Fund’s Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange (“NYSE”), generally 4:00 p.m., Eastern Time (“E.T.”) (the “NAV Calculation Time”). NAV per Share will be calculated by dividing the Fund’s net assets by the number of Fund Shares outstanding.

¹⁷ It is expected that the Fund will typically issue and redeem Creation Units on a cash basis; however, at times, the Fund may issue and redeem Creation Units on an in-kind (or partially in-kind) (or partially cash) basis.

may include cash-in-lieu amounts) with the lower value will pay to the other an amount in cash equal to the difference (referred to as the “Cash Component”).

Creations and redemptions must be made by or through an Authorized Participant that has executed an agreement that has been agreed to by the Distributor and the Transfer Agent with respect to creations and redemptions of Creation Units. All standard orders to create Creation Units must be received by the Transfer Agent no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) (the “Closing Time”) in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt not later than the Closing Time of a redemption request in proper form by the Fund through the Transfer Agent and only on a business day. The Custodian, through the National Securities Clearing Corporation (“NSCC”), will make available on each business day, prior to the opening of business of the Exchange, the list of the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Component (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day prior to commencement of trading in the Shares.

Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolio for the Fund will not meet all of the “generic” listing requirements of Nasdaq Rule 5735(b)(1) applicable to the listing of Managed Fund Shares. The Fund’s portfolio will meet all such requirements except for those set forth in Nasdaq

Rule 5735(b)(1)(A)(i), (b)(1)(A)(ii), (b)(1)(B)(i), (b)(1)(B)(iv), (b)(1)(B)(v), and (b)(1)(E), as described below. The Exchange notes that the proposed rule change set forth in this filing is based on a very similar proposed rule change that was recently approved by the Commission with respect to another actively-managed ETF for which the Adviser serves as investment adviser and the Sub-Adviser serves as investment sub-adviser.¹⁸

The Fund will not comply with the requirements set forth in Nasdaq Rule 5735(b)(1)(A)(i)¹⁹ and (b)(1)(A)(ii)²⁰ with respect to the Fund's investments in

¹⁸ See Securities Exchange Act Release No. 87410 (October 28, 2019), 84 FR 58750 (November 1, 2019) (SR-NYSEArca-2019-33) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Regarding Changes to Investments of the First Trust TCW Unconstrained Plus Bond ETF) (the "Recent Approval").

¹⁹ Nasdaq Rule 5735(b)(1)(A)(i) provides that the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(a) Component stocks (excluding Exchange Traded Derivative Securities and Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Exchange Traded Derivative Securities and Linked Securities) each shall have a minimum market value of at least \$75 million;

(b) Component stocks (excluding Exchange Traded Derivative Securities and Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Exchange Traded Derivative Securities and Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months;

(c) The most heavily weighted component stock (excluding Exchange Traded Derivative Securities and Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Exchange Traded Derivative Securities and Linked Securities) shall not exceed 65% of the equity weight of the portfolio;

(d) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be

no minimum number of component stocks if (i) one or more series of Exchange Traded Derivative Securities or Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Exchange Traded Derivative Securities or Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares;

(e) Except as provided herein, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934; and

(f) American Depositary Receipts ("ADRs") in a portfolio may be exchange-traded or non-exchange-traded. However, no more than 10% of the equity weight of a portfolio shall consist of non-exchange-traded ADRs.

²⁰ Nasdaq Rule 5735(b)(1)(A)(ii) provides that the component stocks of the equity portion of a portfolio that are Non-U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(a) Non-U.S. Component Stocks each shall have a minimum market value of at least \$100 million;

(b) Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months;

(c) The most heavily weighted Non-U.S. Component stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio;

(d) Where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Exchange Traded Derivative Securities or Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Exchange Traded Derivative Securities or Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; and

(e) Each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.

equity securities.²¹ Instead, the Exchange proposes that the Fund's investments in equity securities will meet the requirements of Nasdaq Rule 5735(b)(1)(A) with the exception of Nasdaq Rule 5735(b)(1)(A)(i)(c) and (d) (with respect to U.S. Component Stocks) and Nasdaq Rule 5735(b)(1)(A)(ii)(c) and (d) (with respect to Non-U.S. Component Stocks). Any Fund investment in exchange-traded common stocks, preferred stocks, REITS, ETFs, ETNs, exchange-traded equity securities issued upon conversion of fixed income convertible securities, exchange-traded Work Out Securities and U.S. exchange-traded closed-end funds would provide for enhanced diversification of the Fund's portfolio and, in any case, would be Non-Principal Investments and would not exceed 20% of the Fund's net assets in the aggregate. With respect to any Fund holdings of exchange-traded equity securities issued upon conversion of fixed income convertible securities and exchange-traded Work Out Securities, such securities will not exceed 10% and 5%, respectively, of the Fund's total assets.

The Adviser and Sub-Adviser represent that the Fund generally will not actively invest in equity securities issued upon conversion of fixed income convertible securities or Work Out Securities, but may, at times, receive a distribution of such securities in connection with the Fund's holdings in other securities. Therefore, the Fund's holdings in equity securities issued upon conversion of fixed income convertible securities and Work Out Securities generally would not be acquired as the result of the Fund's voluntary investment decisions. The Adviser and Sub-Adviser represent that, under these

²¹ For purposes of these exceptions, investments in equity securities that are OTC Work Out Securities, OTC equity securities issued upon conversion of fixed income convertible securities, or non-exchange-traded securities of other open-end investment companies (e.g., mutual funds) are excluded and are discussed further below.

circumstances, application of the weighting requirements of Nasdaq Rules 5735(b)(1)(A)(i)(c) and 5735(b)(1)(A)(ii)(c) and the minimum number of components requirements of Nasdaq Rules 5735(b)(1)(A)(i)(d) and 5735(b)(1)(A)(ii)(d) would impose an unnecessary burden on the Fund's ability to hold such equity securities.

The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(B)(i) that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of \$100 million or more. Instead, the Exchange proposes that components that in the aggregate account for at least 50% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of \$50 million or more. As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. In addition, at least 50% of the weight of the Fund's portfolio would continue to be subject to a substantial minimum (i.e., \$50 million) original principal amount outstanding. The Exchange believes this limitation would provide significant additional diversification to the Fund's investments in Fixed Income Securities, and reduce concerns that the Fund's investments in such securities would be readily susceptible to market manipulation.

The Fund will not comply with the requirements in Nasdaq Rule 5735(b)(1)(B)(iv) that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio meet one of the criteria specified in Nasdaq Rule 5735(b)(1)(B)(iv), because certain Private ABS/MBS cannot satisfy the

criteria in Nasdaq Rule 5735(b)(1)(B)(iv).²² Instead, the Exchange proposes that the Fund's investments in Fixed Income Securities other than Private ABS/MBS will be required to comply with the requirements of Nasdaq Rule 5735(b)(1)(B)(iv). As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. The Exchange believes this limitation would provide additional diversification to the Fund's investments in Private ABS/MBS, and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

The Exchange notes that the Commission has previously approved the listing of Managed Fund Shares with similar investment objectives and strategies without imposing requirements that a certain percentage of such funds' securities meet one of the criteria corresponding to those set forth in Nasdaq Rule 5735(b)(1)(B)(iv).²³

²² Nasdaq Rule 5735(b)(1)(B)(iv) provides that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

²³ See the Recent Approval, supra note 18. In addition, see, e.g., Exchange Act Release Nos. 67894 (September 20, 2012), 77 FR 59227 (September 26, 2012) (SR-BATS-2012-033) (order approving the listing and trading of shares of the iShares Short Maturity Bond Fund); 70342 (September 6, 2013), 78 FR 56256 (September 12, 2013) (SR-NYSEArca-2013-71) (order approving the listing and trading of shares of the SPDR SSgA Ultra Short Term Bond ETF, SPDR SSgA Conservative Ultra Short Term Bond ETF and SPDR SSgA Aggressive Ultra Short Term Bond ETF).

The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(B)(v) that Private ABS/MBS in the Fund's portfolio account, in the aggregate, for no more than 20% of the weight of the Fund's portfolio.²⁴ Instead, the Exchange proposes that, in order to enable the portfolio to be more diversified and provide the Fund with an opportunity to earn higher returns, the Fund may invest up to 50% of its total assets in the aggregate in Private ABS/MBS, provided that the Fund (1) may not invest more than 30% of its total assets in non-agency RMBS; (2) may not invest more than 25% of its total assets in non-agency CMBS and CLOs; and (3) may not invest more than 25% of its total assets in non-agency ABS.²⁵

With respect to the Fund's investments in up to 30% of its total assets in Private ABS/MBS that exceed the 20% of the weight of the Fund's portfolio that may be invested in Private ABS/MBS under Nasdaq Rule 5735(b)(1)(B)(v),²⁶ the following restrictions (which are identical to those set forth in the Recent Approval) will apply:

- Non-agency RMBS shall have a weighted average loan age of 84 months or more;
- Non-agency CMBS and CLOs shall have a weighted average loan age of 60 months or more; and
- Non-agency ABS shall have a weighted average loan age of 12 months or more.

In addition, as noted above, the Fund may not invest more than 2% of its total

²⁴ See note 13, supra.

²⁵ The Exchange notes that substantially the same proposal was set forth in the Recent Approval.

²⁶ See note 13, supra.

assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis.²⁷ The Exchange believes these limitations would provide additional diversification to the Fund's Private ABS/MBS investments and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

The Adviser and Sub-Adviser represent that the RMBS sector can be an important component of the Fund's investment strategy because of the potential for attractive risk-adjusted returns relative to other fixed income sectors and the potential to add significantly to the diversification in the Fund's portfolio. Similarly, the Private ABS/MBS sectors also have the potential for attractive risk-adjusted returns and added portfolio diversification.

The Fund's portfolio will not comply with the requirements set forth in Nasdaq Rule 5735(b)(1)(E).²⁸ Specifically, the Fund's investments in OTC derivatives may exceed 20% of Fund assets, calculated as the aggregate gross notional value of such OTC derivatives. The Exchange proposes that up to 25% of the Fund's assets (calculated as the aggregate gross notional value) may be invested in OTC derivatives that are used to

²⁷ As noted above, the Fund's holdings in derivative instruments for hedging purposes would be excluded from the determination of compliance with this 2% limitation. The total gross notional value of the Fund's holdings in derivative instruments used to gain exposure to a specific asset is limited to 2% of the Fund's total assets.

²⁸ Nasdaq Rule 5735(b)(1)(E) provides that the portfolio may hold OTC derivatives, including forwards, options and swaps on commodities, currencies and financial instruments (e.g., stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing; however, on both an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in OTC derivatives. For purposes of calculating this limitation, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

reduce currency, interest rate or credit risk arising from the Fund's investments (that is, "hedge"). The Fund's investments in OTC derivatives other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate or credit risk will be limited to 20% of the assets in the Fund's portfolio, calculated as the aggregate gross notional value of such OTC derivatives.

The Adviser and Sub-Adviser believe that it is important to provide the Fund with additional flexibility to manage risk associated with its investments. Depending on market conditions, it may be critical that the Fund be able to utilize available OTC derivatives for this purpose to attempt to reduce impact of currency, interest rate or credit fluctuations on Fund assets. Therefore, the Exchange believes it is appropriate to apply a limit of up to 25% of the Fund's assets to the Fund's investments in OTC derivatives (calculated as the aggregate gross notional value of such OTC derivatives), including forwards, options and swaps, that are used for hedging purposes, as described above.²⁹

As noted above, the Fund may hold equity securities that are Work Out Securities, which generally are traded OTC (but that may be traded on a U.S. or foreign exchange), exchange-traded or OTC equity securities issued upon conversion of fixed income convertible securities, and non-exchange-traded securities of other open-end investment company (e.g., mutual funds). The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange

²⁹ In the Recent Approval, supra note 18, the Commission approved an exception to the applicable generic listing requirements relating to investments in OTC derivatives that was substantially the same as that proposed in this filing. See also Securities Exchange Act Release No. 80657 (May 11, 2017), 82 FR 22702 (May 17, 2017) (SR-NYSEArca-2017-09) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Regarding Investments of the Janus Short Duration Income ETF Listed Under NYSE Arca Equities Rule 8.600).

notwithstanding that the Fund would not meet the requirements of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) with respect to the Fund's investments in non-exchange-traded securities of open-end investment companies,³⁰ and notwithstanding that the Fund's holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities would not meet the requirements of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) and Nasdaq Rule 5735(b)(1)(A)(ii)(a) through (e). Investments in non-exchange-traded securities of open-end investment companies will not be principal investments of the Fund.³¹ Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term. With respect to any Fund holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities, such securities will not exceed 10% and 5%, respectively, of the Fund's total assets. The Adviser and Sub-Adviser represent that the Fund generally will not actively invest in OTC equity securities issued upon conversion of fixed income convertible securities or OTC Work Out Securities, but may, at times, receive a distribution of such securities in connection with the Fund's holdings in other securities.

³⁰ Nasdaq Rule 5735(b)(1)(A) specifies the equity securities accommodated by the generic criteria in Nasdaq Rule 5735(b)(1)(A), namely, U.S. Component Stocks (as described in Nasdaq Rule 5705); Non-U.S. Component Stocks (as described in Nasdaq Rule 5705); Exchange Traded Derivative Securities (as described in Nasdaq Rule 5735(c)(6)); and Linked Securities (as described in Nasdaq Rule 5710).

³¹ For purposes of this section of the filing, non-exchange-traded securities of other registered investment companies do not include money market funds, which are cash equivalents under Nasdaq Rule 5735(b)(1)(C) and for which there is no limitation in the percentage of the portfolio invested in such securities.

Therefore, the Fund's holdings in equity securities issued upon conversion of fixed income convertible securities and Work Out Securities generally would not be acquired as the result of the Fund's voluntary investment decisions.

With respect to investments in non-exchange-traded investment company securities, because such securities have a net asset value based on the value of securities and financial assets the investment company holds, the Exchange believes it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Nasdaq Rule 5735(b)(1)(A)(i).³²

The Exchange notes that Nasdaq Rule 5735(b)(1)(A)(i)(a) through (d) exclude application of those provisions to certain "Exchange Traded Derivative Securities" that are exchange-traded investment company securities, including Portfolio Depository Receipts (as described in Nasdaq Rule 5705(a)), Index Fund Shares (as described in Nasdaq Rule 5705(b)) and Managed Fund Shares (as described in Nasdaq Rule 5735).³³

³² The Commission has previously approved proposed rule changes under Section 19(b) of the Act for series of Managed Fund Shares that may invest in non-exchange traded investment company securities. See, e.g., the Recent Approval, supra note 18; Securities Exchange Act Release No. 78414 (July 26, 2016), 81 FR 50576 (August 1, 2016) (SR-NYSEArca-2016-79) (order approving listing and trading of shares of the Virtus Japan Alpha ETF under NYSE Arca Equities Rule 8.600).

³³ The Commission initially approved the Exchange's proposed rule change to provide exclusions for "Derivative Securities Products" (e.g., Index Fund Shares, Portfolio Depository Receipts and Managed Fund Shares) in Nasdaq Rules 5705(b)(3)(A)(i)(a) through (d) and 5705(b)(3)(A)(ii)(a) through (d). See Securities Exchange Act Release No. 69928 (July 3, 2013), 78 FR 41489 (July 10, 2013) (SR-NASDAQ-2013-094) (Notice of Filing and Immediate Effectiveness to Conform Rule 5705 Governing Exchange Traded Funds to the Listing Requirements of Another Market) (the "2013 Approval"). The 2013 Approval was intended to conform provisions of Nasdaq Rule 5705 to the comparable provisions of the corresponding NYSE Arca rule, as amended in 2008. See Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR-NYSEArca-2008-29) (Order Granting Approval of a Proposed Rule

In the 2008 NYSEArca Approval Order, the Commission stated that “based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.” The Exchange notes that it would be difficult or impossible to apply to non-exchange-traded investment company securities the generic quantitative criteria (e.g., market capitalization, trading volume, or portfolio criteria) in Nasdaq Rule 5735(b)(1)(A)(i)(a) through (d) applicable to U.S. Component Stocks. For example, the requirement for U.S. Component Stocks in Nasdaq Rule 5735(b)(1)(A)(i)(b) that there be a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months, is tailored to exchange-traded securities (e.g., U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market. Moreover, application of such criteria would not serve the purpose served with respect to U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S. Component Stocks held by series of Managed Fund Shares.

The Exchange notes that the Commission has previously approved listing and

Change, as Modified by Amendment No. 1 Thereto, to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units) (“2008 NYSEArca Approval Order”). The Commission subsequently approved generic criteria applicable to the listing and trading of Managed Fund Shares, including exclusions for Exchange Traded Derivative Securities and Linked Securities in Nasdaq Rule 5735(b)(1)(A)(i)(a) through (d) in Securities Exchange Act Release No. 78918 (September 23, 2016), 81 FR 67033 (September 29, 2016) (SR-NASDAQ-2016-104) (Order Granting Approval of a Proposed Rule Change To Amend Nasdaq Rule 5735 To Adopt Generic Listing Standards for Managed Fund Shares). See also Securities Exchange Release No. 78616 (August 18, 2016), 81 FR 57968 (August 24, 2016) (Notice of Filing of Proposed Rule Change to Amend Nasdaq Rule 5735 To Adopt Generic Listing Standards for Managed Fund Shares).

trading of issues of Managed Fund Shares that may invest in equity securities that are non-exchange-traded securities of other open-end investment companies notwithstanding that a fund would not meet requirements corresponding to those of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) with respect to such fund's investments in such securities.³⁴ Thus, the Exchange believes that it is appropriate to permit the Fund to invest in non-exchange-traded open-end management investment company securities, as described above.

Deviations from the generic requirements are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in manner that is consistent with the principles of Section 6(b)(5) of the Act. In addition, the proposed deviations from the generic requirements and proposed alternative requirements set forth in this filing are consistent with those set forth in the Recent Approval. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

The Exchange notes that, other than Nasdaq Rule 5735(b)(1)(A)(i), (b)(1)(A)(ii), (b)(1)(B)(i), (b)(1)(B)(iv), (b)(1)(B)(v), and (b)(1)(E), as described above, the Fund's portfolio will meet all other requirements of Nasdaq Rule 5735.

Availability of Information

³⁴ See, e.g., the Recent Approval, *supra* note 18; Securities Exchange Act Release No. 83319 (May 24, 2018) (SR-NYSEArca-2018-15) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF Under NYSE Arca Rule 8.600-E).

The Fund's website (www.ftportfolios.com) will include the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and midpoint of the bid/ask spread at the time of calculation of such NAV (the "Bid/ Ask Price"),³⁵ and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio as defined in Nasdaq Rule 5735(c)(2) that forms the basis for the Fund's calculation of NAV at the end of the business day.³⁶

On a daily basis, the Fund will disclose the information required under Nasdaq Rule 5735(c)(2) to the extent applicable. The website information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily

³⁵ The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

³⁶ Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of the Fund. Authorized Participants may refer to the basket composition file for information regarding Fixed Income Securities, and any other instrument that may comprise the Fund's basket on a given day.

Investors can also obtain the Trust's Statement of Additional Information ("SAI") and Form N-CEN and the Fund's Shareholder Reports and Form N-CSR. The SAI and the Fund's Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N-CSR and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

Intra-day and closing price information regarding exchange-traded options will be available from the exchange on which such instruments are traded. Intra-day and closing price information regarding Fixed Income Securities will be available from major market data vendors. Price information relating to OTC options, forwards and swaps will be available from major market data vendors. Intra-day price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. Intra-day and other price information for the Fixed Income Securities in which the Fund will invest will be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other market participants. Additionally, the Trade Reporting and Compliance Engine ("TRACE") of the Financial Industry Regulatory Authority ("FINRA") will be a source of price information for corporate bonds, and Private

ABS/MBS, to the extent transactions in such securities are reported to TRACE.³⁷ Trade price and other information relating to municipal bonds is available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") system. Non-exchange-traded open-end investment company securities are typically priced once each business day and their prices will be available through the applicable fund's website or from major market data vendors. Price information regarding U.S. government securities, bank loans, Private ABS/MBS, cash equivalents and short-term instruments with maturities of three months or more generally may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. Information relating to weighted average loan age for Private ABS/MBS is widely available from major market data vendors such as Bloomberg.

Information regarding market price and trading volume of the Shares, ETFs, ETNs, common stocks, preferred stocks, REITs, equity securities issued upon conversion of fixed income convertible securities, Work Out Securities and closed-end funds 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.

³⁷ Broker-dealers that are FINRA member firms have an obligation to report transactions in specified debt securities to TRACE to the extent required under applicable FINRA rules. Generally, such debt securities will have at issuance a maturity that exceeds one calendar year. For Fixed Income Securities that are not reported to TRACE, (i) intra-day price quotations will generally be available from broker-dealers and trading platforms (as applicable) and (ii) price information will be available from feeds from market data vendors, published or other public sources, or online information services, as described above.

Quotation and last sale information for the Shares, ETFs, ETNs, closed-end funds, REITs, certain common stocks, certain preferred stocks, certain equity securities issued upon conversion of fixed income convertible securities, and certain Work Out Securities will be available via the Consolidated Tape Association (“CTA”) high-speed line. Exchange-traded options quotation and last sale information for options cleared via the Options Clearing Corporation (“OCC”) are available via the Options Price Reporting Authority (“OPRA”). In addition, the Intraday Indicative Value (“IIV”), as defined in Nasdaq Rule 5735(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Regular Market Session.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rule 4120(a)(12). Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the other assets constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Fund’s Shares also will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq’s existing rules governing the trading of equity securities.

Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m., E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

With the exception of the requirements of Nasdaq Rule 5735(b)(1)(A)(i), (b)(1)(A)(ii), (b)(1)(B)(i), (b)(1)(B)(iv), (b)(1)(B)(v), and (b)(1)(E), as described above in “Application of Generic Listing Requirements,” the Shares of the Fund will conform to the initial and continued listing criteria under Nasdaq Rule 5735. Consistent with Nasdaq Rule 5735(d)(2)(B)(ii), the Adviser and Sub-Adviser will 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 Fund’s portfolio.

The Exchange represents that, for continued listing, the Fund will be in compliance with Rule 10A-3³⁸ under the Act. 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. The Fund’s investments will be consistent with its investment goal and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

Surveillance

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

³⁸ 17 CFR 240.10A-3.

deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.³⁹

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.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-traded options and certain exchange-traded futures, ETFs, ETNs, closed-end funds, certain common stocks, certain preferred stocks, certain REITs, certain equity securities issued upon conversion of fixed income convertible securities and certain Work Out Securities with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities.⁴⁰ In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. In addition, FINRA,

³⁹ FINRA conducts cross-market surveillance on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

⁴⁰ For a list of the current members of ISG, see www.isgportal.org. 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 (“CSSA”).

on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

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

All statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange.

The issuer must notify the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

Information Circular

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: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the

Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) 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; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's website.

b. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁴¹ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares are listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735.

⁴¹ 15 U.S.C. 78f(b)(5).

The Exchange has in place surveillance procedures that are adequate to properly monitor Exchange trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-traded options and certain exchange-traded futures, ETFs, ETNs, closed-end funds, certain common stocks, certain preferred stocks, certain REITs, certain equity securities issued upon conversion of fixed income convertible securities and certain Work Out Securities with other markets and other entities that are members of ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities. The Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. In addition, 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 TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. The Adviser and Sub-Adviser are not registered as broker-dealers. The Adviser is affiliated with First Trust Portfolios L.P., a broker-dealer, and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates

regarding access to information concerning the composition and/or changes to the portfolio.

The Exchange notes that, other than Nasdaq Rule 5735(b)(1)(A)(i), (b)(1)(A)(ii), (b)(1)(B)(i), (b)(1)(B)(iv), (b)(1)(B)(v), and (b)(1)(E), as described above, the Fund's portfolio will meet all other requirements of Nasdaq Rule 5735. Additionally, the Exchange notes that the proposed rule change set forth in this filing is based on a very similar proposed rule change that was recently approved by the Commission with respect to another actively-managed ETF for which the Adviser serves as investment adviser and the Sub-Adviser serves as investment sub-adviser.⁴²

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares, ETFs, ETNs, closed-end funds, certain REITs, certain common stocks, certain preferred stocks, certain equity securities issued upon conversion of fixed income convertible securities, and certain Work Out Securities will be available via the CTA high-speed line. Exchange-traded options quotation and last sale information for options cleared via the OCC are available via OPRA. The Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund

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See note 18, supra.

will be halted under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rule 4120(a)(12), or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

Trading in the Fund's Shares also will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, NAV, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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 additional type of actively-managed exchange-traded product that generally will principally hold fixed income securities and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, NAV, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Deviations from the generic requirements, as described above, are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in a manner that is consistent with the principles of Section 6(b)(5) of the Act. In addition, the proposed

deviations from the generic requirements and proposed alternative requirements set forth in this filing are consistent with those set forth in the Recent Approval. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

As noted above, the Fund will not comply with the requirements set forth in Nasdaq Rule 5735(b)(1)(A)(i) and (b)(1)(A)(ii) with respect to the Fund's investments in equity securities. Instead, the Exchange proposes that the Fund's investments in equity securities will meet the requirements of Nasdaq Rule 5735(b)(1)(A) with the exception of Nasdaq Rule 5735(b)(1)(A)(i)(c) and (d) (with respect to U.S. Component Stocks) and Nasdaq Rule 5735(b)(1)(A)(ii)(c) and (d) (with respect to Non-U.S. Component Stocks).⁴³ The Exchange believes it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in such equity securities do not comply with the requirements set forth in Nasdaq Rules 5735(b)(1)(A)(i) and 5735(b)(1)(A)(ii) in that any Fund investment in exchange-traded common stocks, preferred stocks, REITS, ETFs, ETNs, U.S. exchange-traded closed-end funds, exchange-traded equity securities issued upon conversion of fixed income convertible securities, and exchange-traded Work Out Securities would provide for enhanced diversification of the Fund's portfolio. Such securities would be Non-Principal Investments, not exceeding 20% of the Fund's net assets in the aggregate.

The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(B)(i) that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of \$100

⁴³ See notes 19 and 20, supra. See also note 21, supra.

million or more. Instead, the Exchange proposes that components that in the aggregate account for at least 50% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of \$50 million or more. As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. In addition, at least 50% of the weight of the Fund's portfolio would continue to be subject to a substantial minimum (i.e., \$50 million) original principal amount outstanding. The Exchange believes this limitation would provide significant additional diversification to the Fund's investments in Fixed Income Securities, and reduce concerns that the Fund's investments in such securities would be readily susceptible to market manipulation.

The Exchange proposes that Private ABS/MBS will not be required to comply with the requirements of Nasdaq Rule 5735(b)(1)(B)(iv) because certain Private ABS/MBS cannot satisfy the criteria in Nasdaq Rule 5735(b)(1)(B)(iv). Instead, the Exchange proposes that the Fund's investments in Fixed Income Securities other than Private ABS/MBS will be required to comply with the requirements of Nasdaq Rule 5735(b)(1)(B)(iv). The Exchange believes that this is appropriate because Nasdaq Rule 5735(b)(1)(B)(iv) does not appear to be designed for structured finance vehicles such as Private ABS/MBS. As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. The Exchange believes this limitation would provide additional diversification to the Fund's investments in Private ABS/MBS, and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

As noted above, the Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(B)(v) that Private ABS/MBS in the Fund's portfolio account, in the aggregate, for no more than 20% of the weight of the Fund's portfolio. Instead, the Exchange proposes that, in order to enable the portfolio to be more diversified and provide the Fund with an opportunity to earn higher returns, the Fund may invest up to 50% of its total assets in the aggregate in Private ABS/MBS, provided that the Fund (1) may not invest more than 25% of its total assets in non-agency ABS; (2) may not invest more than 30% of its total assets in non-agency RMBS; and (3) may not invest more than 25% of its total assets in non-agency CMBS and CLOs. With respect to the Fund's investments in up to 30% of its total assets in Private ABS/MBS that exceed the 20% of the weight of the Fund's portfolio that may be invested in Private ABS/MBS under Nasdaq Rule 5735(b)(1)(B)(v), the Fund's holdings in Private ABS/MBS will be subject to minimum weighted average loan age restrictions described above.⁴⁴ In addition, as noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis.⁴⁵ The Exchange believes these limitations would provide additional diversification to the Fund's Private ABS/MBS investments and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

The Exchange believes it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in such Private ABS/MBS do not comply with the requirements set forth in Nasdaq Rule

⁴⁴ See note 13 and accompanying text, supra.

⁴⁵ See note 27, supra.

5735(b)(1)(B)(v) in that the Fund's investment in Private ABS/MBS is expected to provide the Fund with benefits associated with increased diversification, as Private ABS/MBS investments tend to be less correlated to interest rates than many other fixed income securities. The Fund's investment in Private ABS/MBS will be subject to the Fund's liquidity procedures as adopted by the Trust Board, and the Adviser and Sub-Adviser do not expect that investments in Private ABS/MBS of up to 50% of the total assets of the Fund will have any material impact on the liquidity of the Fund's investments.

The Adviser and Sub-Adviser represent that the RMBS sector can be an important component of the Fund's investment strategy because of the potential for attractive risk-adjusted returns relative to other fixed income sectors and the potential to add significantly to the diversification in the Fund's portfolio. Similarly, the Private ABS/MBS sectors also have the potential for attractive risk-adjusted returns and added portfolio diversification.

The Exchange believes the loan age parameters described above are appropriate for the corresponding Private ABS/MBS; the 84, 60 and 12 month time frames take into account that the longer Private ABS/MBS continue to trade, the more price discovery has occurred in the market and the more opportunity there has been for market participants to perform due diligence in understanding and evaluating the underlying loans for such securities.

With respect to non-agency RMBS, a weighted average loan age of 84 months accommodates investment in well-seasoned securities that are continuing to trade with resilient pricing notwithstanding events during the market crisis of 2008-2010, during

which loan defaults drastically impacted pricing in non-agency RMBS. Pricing in such securities is generally more reliable than RMBS with a lower loan age in that pricing is no longer reliant on market expectations but on actual post-crisis loan performance.

With respect to non-agency CMBS, a weighted average loan age of 60 months would include securities for which there is a known track record regarding cash flows and default rates for loans underlying real estate and other assets underlying CMBS. A five year loan age facilitates pricing based on actual loan performance rather than default projections. Similarly, for non-agency CLOs, a weighted average loan age of 60 months provides the opportunity for market participants to evaluate data regarding the bank loans underlying the CLOs and to assess how the loans are actually being used--for example, to implement corporate strategy or for capital usage--rather than relying on pro forma statements regarding the loans.

With respect to non-agency ABS, a weighted average loan age of 12 months provides an appropriately limited time frame for market participants to assess the likely trajectory of expected defaults (for example, for sub-prime auto loans). The loans underlying non-agency ABS are typically of much shorter duration than other Private ABS/MBS. Because such loans are more likely to default within a short time after issuance, a one-year minimum loan age can be expected to provide a sufficient time frame for market participants to assess the reliability of loan pricing for loans underlying non-agency ABS.

As noted above, the Fund's portfolio will not comply with the requirements set forth in Nasdaq Rule 5735(b)(1)(E). The Exchange proposes that up to 25% of the Fund's assets (calculated as the aggregate gross notional value) may be invested in OTC

derivatives that are used to reduce currency, interest rate or credit risk arising from the Fund's investments (that is, "hedge"), and that the Fund's investments in OTC derivatives other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate or credit risk will be limited to 20% of the assets in the Fund's portfolio, calculated as the aggregate gross notional value of such OTC derivatives. As noted above, the Fund will not use derivative instruments to gain exposure to Private ABS/MBS, and derivative instruments linked to such securities will be used for hedging purposes only.

The Exchange believes it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in OTC derivatives do not comply with the requirements set forth in Nasdaq Rule 5735(b)(1)(E) in that, depending on market conditions, it may be critical that the Fund be able to utilize available OTC derivatives to attempt to reduce impact of currency, interest rate or credit fluctuations on Fund assets. Therefore, the Exchange believes it is appropriate to apply a limit of up to 25% of the Fund's assets to the Fund's investments in OTC derivatives (calculated as the aggregate gross notional value of such OTC derivatives), including forwards, options and swaps, that are used for hedging purposes, as described above.

The Adviser and Sub-Adviser represent that OTC derivatives can be tailored to hedge the specific risk arising from the Fund's investments and frequently may be a more efficient hedging vehicle than listed derivatives. For example, the Fund could obtain an OTC foreign currency derivative in a notional amount that exactly matches the notional amount of the Fund's investments. If the Fund were limited to investing up to 20% of

assets in OTC derivatives, the Fund might have to “over hedge” or “under hedge” if round lot sizes in listed derivatives were not available. In addition, for example, an OTC CDX option can be structured to provide protection tailored to the Fund’s credit exposure and can be a more efficient way to hedge credit risk with respect to specific exposures than listed derivatives. Similarly, OTC interest rate derivatives can be more effective hedges of interest rate exposure because they can be customized to match the basis risk arising from the term of the investments held by the Fund.

Because the Fund, in furtherance of its investment objective, may invest a substantial percentage of its investments in foreign currency denominated Fixed Income Securities, the 20% limit in Nasdaq Rule 5735(b)(1)(E) could result in the Fund being unable to fully pursue its investment objective while attempting to sufficiently mitigate investment risks. The inability of the Fund to adequately hedge its holdings would effectively limit the Fund’s ability to invest in certain instruments, or could expose the Fund to additional investment risk. For example, if the Fund’s assets (on a gross notional value basis) were \$100 million and no listed derivative were suitable to hedge the Fund’s risk, under the generic standards the Fund would be limited to holding up to \$20 million gross notional value in OTC derivatives ($\$100 \text{ million} * 20\%$). Accordingly, the maximum amount the Fund would be able to invest in foreign currency denominated Fixed Income Securities while remaining adequately hedged would be \$20 million. The Fund then would hold \$60 million in assets that could not be hedged, other than with listed derivatives, which, as noted above, might not be sufficiently tailored to the specific instruments to be hedged.

In addition, by applying the 20% limitation in Nasdaq Rule 5735(b)(1)(E), the Fund would be less able to protect its holdings from more than one risk simultaneously. For example, if the Fund's assets (on a gross notional basis) were \$100 million and the Fund held \$20 million in foreign currency denominated Fixed Income Instruments with two types of risks (e.g., currency and credit risk) which could not be hedged using listed derivatives, the Fund would be faced with the choice of either holding \$20 million aggregate gross notional value in OTC derivatives to mitigate one of the risks while passing the other risk to its shareholders, or, for example, holding \$10 million aggregate gross notional value in OTC derivatives on each of the risks while passing the remaining portion of each risk to the Fund's shareholders.

The Adviser and Sub-Adviser believe that it is in the best interests of the Fund's shareholders for the Fund to be allowed to reduce the currency, interest rate or credit risk arising from the Fund's investments using the most efficient financial instrument. While certain risks can be hedged via listed derivatives, OTC derivatives (such as forwards, options and swaps) can be customized to hedge against precise risks. Accordingly, the Adviser and Sub-Adviser believe that OTC derivatives may frequently be a more efficient hedging vehicle than listed derivatives. Therefore, the Exchange believes that increasing the percentage limit in Nasdaq Rule 5735(b)(1)(E), as described above, to the Fund's investments in OTC derivatives, including forwards, options and swaps, that are used specifically for hedging purposes would help protect investors and the public interest.

As noted above, the Fund's portfolio will not meet the requirements of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) with respect to the Fund's investments in

non-exchange-traded securities of open-end investment companies, and, with respect to the Fund's holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities, will not meet the requirements of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) and Nasdaq Rule 5735(b)(1)(A)(ii)(a) through (e). The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) with respect to the Fund's investments in non-exchange-traded securities of open-end investment companies, and notwithstanding that the Fund's holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities would not meet the requirements of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) and Nasdaq Rule 5735(b)(1)(A)(ii)(a) through (e). Investments in non-exchange-traded securities of open-end investment companies will not be principal investments of the Fund.⁴⁶ Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term.

With respect to any Fund holdings of exchange-traded or OTC equity securities issued upon conversion of fixed income convertible securities and Work Out Securities, such securities will not exceed 10% and 5%, respectively, of the Fund's total assets. The Adviser and Sub-Adviser represent that the Fund generally will not actively invest in equity securities issued upon conversion of fixed income convertible securities or Work Out Securities, but may, at times, receive a distribution of such securities in connection

⁴⁶ See note 31, supra.

with the Fund's holdings in other securities. Therefore, the Fund's holdings in equity securities issued upon conversion of fixed income convertible securities and Work Out Securities generally would not be acquired as the result of the Fund's voluntary investment decisions.

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 shares of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

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 notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that generally will principally hold fixed income securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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)

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A)⁴⁷ of the Act and Rule 19b-4(f)(6) thereunder.⁴⁸ The Exchange asserts that the proposed rule change does not (i) significantly affect the protection of investors or the public interest, (ii) impose any significant burden on competition, and (iii) become operative for 30 days after its filing date, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. Because the deviations from the generic requirements proposed in this filing are substantively identical to those proposed in the Recent Approval, which was recently approved by the Commission with respect to another actively-managed ETF for which the Adviser serves as investment adviser and the Sub-Adviser serves as investment sub-adviser, the Exchange believes the rule change qualifies for immediate effectiveness as a “non-controversial” rule change under Rule 19b-4(f)(6) of the Act. In this regard, the Exchange does not believe that the proposed rule change raises any novel issues.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If

⁴⁷ 15 U.S.C. 78s(b)(3)(A).

⁴⁸ 17 CFR 240.19b-4(f)(6).

the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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

Exhibit 1 - Form of Notice of Proposed Rule Change for Federal Register.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2020-005)

January __, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Certain Changes Regarding Investments of the First Trust TCW Opportunistic Fixed Income ETF

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 15, 2020, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. 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 certain changes regarding investments of the First Trust TCW Opportunistic Fixed Income ETF, shares of which are currently listed and traded on the Exchange under Nasdaq Rule 5735 (“Managed Fund Shares”).

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange 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 these 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 aspects of such statements.

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

1. Purpose

The Exchange proposes certain changes, described below under “Application of Generic Listing Requirements”, regarding investments of the First Trust TCW Opportunistic Fixed Income ETF (“Fund”), shares (“Shares”) of which are currently listed and traded on the Exchange under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares³ on the Exchange. Shares of the Fund commenced trading on the Exchange on February 15, 2017 in accordance with the generic listing standards in Nasdaq Rule 5735.

The Shares are offered by First Trust Exchange-Traded Fund VIII (the “Trust”), which is registered with the Securities and Exchange Commission (“SEC” or

³ A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

“Commission”) as an open-end management investment company.⁴ The Fund is a series of the Trust.

First Trust Advisors L.P. is the investment adviser (“First Trust” or “Adviser”) to the Fund. TCW Investment Management Company LLC (“TCW” or the “Sub-Adviser”), serves as the Fund’s investment sub-adviser. First Trust Portfolios L.P. is the distributor (“Distributor”) for the Fund’s Shares. The Bank of New York Mellon acts as the administrator, custodian and transfer agent (“Custodian” or “Transfer Agent”) for the Fund.

Paragraph (g) of Nasdaq Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.⁵ In addition,

⁴ The Trust is registered under the 1940 Act. On December 30, 2019, the Trust filed with the Commission its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-210186 and 811-23147) (“Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812-13795).

⁵ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment

paragraph (g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser and Sub-Adviser are not registered as broker-dealers. The Adviser is affiliated with First Trust Portfolios L.P., a broker-dealer, and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser or the Sub-Adviser becomes registered as a broker-dealer or 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 and maintain a fire wall with respect to relevant personnel and any broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

First Trust TCW Opportunistic Fixed Income ETF

Principal Investments

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.

According to the Registration Statement, the investment objective of the Fund is to seek to maximize long-term total return. Under normal market conditions,⁶ the Fund intends to invest at least 80% of its net assets (including investment borrowings) in a portfolio of “Fixed Income Securities” (described below).

In managing the Fund’s portfolio, the Sub-Adviser intends to attempt to focus the Fund’s portfolio holdings in areas of the fixed income market (based on quality, sector, coupon or maturity) that the Sub-Adviser believes to be relatively undervalued. Pursuant to this investment strategy, the Fund may invest in the following Fixed Income Securities, which may be represented by derivatives relating to such securities, as discussed below:

- securities issued or guaranteed by the U.S. government or its agencies, instrumentalities or U.S. government-sponsored entities (“U.S. government securities”);
- Treasury Inflation Protected Securities (“TIPS”);
- the following non-agency, non-government-sponsored entity (“GSE”) and privately-issued mortgage-related and other

⁶ The term “normal market conditions” is defined in Nasdaq Rule 5735(c)(5). On a temporary basis, including for defensive purposes, during the initial invest-up period (i.e., the six-week period following the commencement of trading of Shares on the Exchange) and during periods of high cash inflows or outflows (i.e., rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of the Fund's net assets as of the opening of business on the first day of such periods), the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser and/or the Sub-Adviser believes securities in which the Fund normally invests have elevated risks due to market, political or economic factors and in other extraordinary circumstances.

asset-backed securities: residential mortgage-backed securities (“RMBS”), commercial mortgage-backed securities (“CMBS”), asset-backed securities (“ABS”), and collateralized loan obligations (“CLOs” and, together with such RMBS, CMBS and ABS “Private ABS/MBS”);⁷

- Agency RMBS, agency CMBS, and agency ABS;
- domestic corporate bonds;
- Fixed Income Securities issued by non-U.S. corporations and non-U.S. governments;
- bank loans, including first lien senior secured floating rate bank loans (“Senior Loans”), secured and unsecured loans, second lien or more junior loans, and bridge loans;
- fixed income convertible securities;
- fixed income preferred securities; and
- municipal bonds.

The Fund may invest in agency RMBS and CMBS by investing in to-be-announced transactions (“TBA Transactions”).

The Fund may hold cash and cash equivalents.⁸ In addition, the Fund may hold the following short-term instruments with maturities of three months or more: certificates

⁷ For avoidance of doubt, “Private ABS/MBS” as referenced herein are non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities as stated in Nasdaq Rule 5735(b)(1)(B)(v).

⁸ For purposes of this filing, cash equivalents are the short-term instruments with maturities of less than 3 months enumerated in Nasdaq Rule 5735(b)(1)(C).

of deposit; bankers' acceptances; repurchase agreements and reverse repurchase agreements; bank time deposits; and commercial paper.

The Fund may enter into short sales of any securities in which the Fund may invest.

The Fund may utilize exchange-listed and over-the-counter ("OTC") traded derivatives instruments for duration/yield curve management and/or hedging purposes, for risk management purposes or as part of its investment strategies. The Fund will use derivative instruments primarily to hedge interest rate risk, actively manage interest rate exposure, hedge foreign currency risk and actively manage foreign currency exposure. The Fund may also use derivative instruments to enhance returns, as a substitute for, or to gain exposure to, a position in an underlying asset, to reduce transaction costs, to maintain full market exposure, to manage cash flows or to preserve capital. Derivatives may also be used to hedge risks associated with the Fund's other portfolio investments. The Fund will not use derivative instruments to gain exposure to Private ABS/MBS, and derivative instruments linked to such securities will be used for hedging purposes only. Derivatives that the Fund may enter into are the following: futures on interest rates, currencies, Fixed Income Securities and fixed income indices; exchange-traded and OTC options on interest rates, currencies, Fixed Income Securities and fixed income indices; swap agreements on interest rates, currencies, Fixed Income Securities and fixed income indices; credit default swaps ("CDX"); and currency forward contracts.

Other Investments

While the Fund, under normal market conditions, invests at least 80% of its net assets in the Principal Investments described above, the Fund may invest its remaining assets in the following “Non-Principal Investments.”

The Fund may invest in exchange-traded common stock, exchange-traded preferred stock, and exchange-traded real estate investment trusts (“REITs”).

The Fund may invest in the securities of other investment companies registered under the 1940 Act, including money market funds, exchange-traded funds (“ETFs”), open-end funds (other than money market funds and other ETFs), and U.S. exchange-traded closed-end funds.⁹

- The Fund may hold exchange-traded notes (“ETNs”).¹⁰
- The Fund may hold exchange-traded or OTC “Work Out Securities.”¹¹
- The Fund may hold exchange-traded or OTC equity securities issued

upon conversion of fixed income convertible securities.

Investment Restrictions

⁹ For purposes of this filing, the term “ETFs” are Index Fund Shares (as described in Nasdaq Rule 5705(b)); Portfolio Depository Receipts (as described in Nasdaq Rule 5705(a)); and Managed Fund Shares (as described in Nasdaq Rule 5735). All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

¹⁰ For purposes of this filing, ETNs are Linked Securities (as described in Nasdaq Rule 5710). While the Fund may invest in inverse ETNs, the Fund will not invest in leveraged or inverse leveraged ETNs (e.g., 2X or -3X).

¹¹ For purposes of this filing, Work Out Securities are U.S. or foreign equity securities of any type acquired in connection with restructurings related to issuers of Fixed Income Securities held by the Fund. Work Out Securities are generally traded OTC, but may be traded on a U.S. or foreign exchange.

The Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. The Fund's holdings in derivative instruments for hedging purposes would be excluded from the determination of compliance with this 2% limitation. The total gross notional value of the Fund's holdings in derivative instruments used to gain exposure to a specific asset is limited to 2% of the Fund's total assets.

The Fund may invest up to 50% of its total assets in the aggregate in Private ABS/MBS, provided that the Fund (1) may not invest more than 30% of its total assets in non-agency RMBS; (2) may not invest more than 25% of its total assets in non-agency CMBS and CLOs; and (3) may not invest more than 25% of its total assets in non-agency ABS.

With respect to the Fund's investments in up to 30% of its total assets in Private ABS/MBS that exceed the 20% of the weight of the Fund's portfolio¹² that may be invested in Private ABS/MBS under Nasdaq Rule 5735(b)(1)(B)(v),¹³ the following restrictions will apply:

- Non-agency RMBS shall have a weighted average loan age of 84 months or more;

¹² See Securities Exchange Act Release No. 86399 (July 17, 2019), 84 FR 35446 (July 23, 2019) (SR-NASDAQ-2019-054) (approving an amendment to Nasdaq Rule 5735(b)(1)(B)(v) to delete the reference to the "fixed income portion of the" portfolio, such that non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities components of a portfolio may not account, in the aggregate, for more than 20% of the weight of the whole portfolio).

¹³ Nasdaq Rule 5735(b)(1)(B)(v) provides that non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the portfolio.

- Non-agency CMBS and CLOs shall have a weighted average loan age of 60 months or more; and
- Non-agency ABS shall have a weighted average loan age of 12 months or more.¹⁴

The Exchange proposes that up to 25% of the Fund's assets may be invested in OTC derivatives that are used to reduce currency, interest rate or credit risk arising from the Fund's investments (that is, "hedge"). The Fund's investments in OTC derivatives other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate or credit risk will be limited to 20% of the assets in the Fund's portfolio. For purposes of these percentage limitations on OTC derivatives, the weight of such OTC derivatives will be calculated as the aggregate gross notional value of such OTC derivatives.

The Fund's holdings of bank loans will not exceed 15% of the Fund's total assets, and the Fund's holdings of bank loans other than Senior Loans will not exceed 5% of the Fund's total assets.

The Fund's holdings in fixed income convertible securities and in equity securities issued upon conversion of such convertible securities will not exceed 10% of the Fund's total assets.

The Fund's holdings in Work Out Securities will not exceed 5% of the Fund's total assets.

¹⁴ Information relating to weighted average loan age for non-agency RMBS, non-agency CMBS, CLOs and non-agency ABS is widely available from major market data vendors such as Bloomberg.

The Fund will not invest in securities or other financial instruments that have not been described in this proposed rule change.

Other Restrictions

The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or -3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).¹⁵

Use of Derivatives by the Fund

The Fund may invest in the types of derivatives described in the "Principal Investments" section above for the purposes described in that section. Investments in derivative instruments will be made in accordance with the Fund's investment objective and policies.

To limit the potential risk associated with such transactions, the Fund will enter into offsetting transactions or segregate or " earmark " assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees (the "Trust Board"). In addition, the Fund has included 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 derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged. Because the markets for certain assets, or the assets themselves, may be unavailable or cost

¹⁵ The Fund's broad-based securities benchmark index is the Bloomberg Barclays U.S. Aggregate Bond Index.

prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure.

Impact on Arbitrage Mechanism

The Adviser and the Sub-Adviser believe there will be minimal, if any, impact to the arbitrage mechanism as a result of the Fund's use of derivatives and Private ABS/MBS. The Adviser and the Sub-Adviser understand that market makers and participants should be able to value derivatives and Private ABS/MBS as long as the positions are disclosed with relevant information. The Adviser and the Sub-Adviser believe that the price at which Shares of the Fund trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem Shares of the Fund at their net asset value ("NAV"), which should ensure that Shares of the Fund will not trade at a material discount or premium in relation to their NAV.

The Adviser and Sub-Adviser do not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives and Private ABS/MBS.

Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis at NAV¹⁶ only in large blocks of Shares ("Creation Units") in transactions with authorized participants, generally including broker-dealers and large institutional investors ("Authorized Participants"). Creation Units generally will consist of 50,000 Shares. The size of a

¹⁶ The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange ("NYSE"), generally 4:00 p.m., Eastern Time ("E.T.") (the "NAV Calculation Time"). NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares outstanding.

Creation Unit is subject to change. As described in the Registration Statement, the Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments (the “Creation Basket”).¹⁷ In addition, if there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments (which may include cash-in-lieu amounts) with the lower value will pay to the other an amount in cash equal to the difference (referred to as the “Cash Component”).

Creations and redemptions must be made by or through an Authorized Participant that has executed an agreement that has been agreed to by the Distributor and the Transfer Agent with respect to creations and redemptions of Creation Units. All standard orders to create Creation Units must be received by the Transfer Agent no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) (the “Closing Time”) in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt not later than the Closing Time of a redemption request in proper form by the Fund through the Transfer Agent and only on a business day. The Custodian, through the National Securities Clearing Corporation (“NSCC”), will make available on each business day, prior to the opening of business of the Exchange, the list of the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Component (if any), for that day. The

¹⁷ It is expected that the Fund will typically issue and redeem Creation Units on a cash basis; however, at times, the Fund may issue and redeem Creation Units on an in-kind (or partially in-kind) (or partially cash) basis.

published Creation Basket will apply until a new Creation Basket is announced on the following business day prior to commencement of trading in the Shares.

Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolio for the Fund will not meet all of the “generic” listing requirements of Nasdaq Rule 5735(b)(1) applicable to the listing of Managed Fund Shares. The Fund’s portfolio will meet all such requirements except for those set forth in Nasdaq Rule 5735(b)(1)(A)(i), (b)(1)(A)(ii), (b)(1)(B)(i), (b)(1)(B)(iv), (b)(1)(B)(v), and (b)(1)(E), as described below. The Exchange notes that the proposed rule change set forth in this filing is based on a very similar proposed rule change that was recently approved by the Commission with respect to another actively-managed ETF for which the Adviser serves as investment adviser and the Sub-Adviser serves as investment sub-adviser.¹⁸

The Fund will not comply with the requirements set forth in Nasdaq Rule 5735(b)(1)(A)(i)¹⁹ and (b)(1)(A)(ii)²⁰ with respect to the Fund’s investments in

¹⁸ See Securities Exchange Act Release No. 87410 (October 28, 2019), 84 FR 58750 (November 1, 2019) (SR-NYSEArca-2019-33) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Regarding Changes to Investments of the First Trust TCW Unconstrained Plus Bond ETF) (the “Recent Approval”).

¹⁹ Nasdaq Rule 5735(b)(1)(A)(i) provides that the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(a) Component stocks (excluding Exchange Traded Derivative Securities and Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Exchange Traded Derivative Securities and Linked Securities) each shall have a minimum market value of at least \$75 million;

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- (b) Component stocks (excluding Exchange Traded Derivative Securities and Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Exchange Traded Derivative Securities and Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months;
- (c) The most heavily weighted component stock (excluding Exchange Traded Derivative Securities and Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Exchange Traded Derivative Securities and Linked Securities) shall not exceed 65% of the equity weight of the portfolio;
- (d) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Exchange Traded Derivative Securities or Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Exchange Traded Derivative Securities or Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares;
- (e) Except as provided herein, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934; and
- (f) American Depositary Receipts ("ADRs") in a portfolio may be exchange-traded or non-exchange-traded. However, no more than 10% of the equity weight of a portfolio shall consist of non-exchange-traded ADRs.

²⁰ Nasdaq Rule 5735(b)(1)(A)(ii) provides that the component stocks of the equity portion of a portfolio that are Non-U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

- (a) Non-U.S. Component Stocks each shall have a minimum market value of at least \$100 million;
- (b) Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months;
- (c) The most heavily weighted Non-U.S. Component stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio;
- (d) Where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a

equity securities.²¹ Instead, the Exchange proposes that the Fund's investments in equity securities will meet the requirements of Nasdaq Rule 5735(b)(1)(A) with the exception of Nasdaq Rule 5735(b)(1)(A)(i)(c) and (d) (with respect to U.S. Component Stocks) and Nasdaq Rule 5735(b)(1)(A)(ii)(c) and (d) (with respect to Non-U.S. Component Stocks). Any Fund investment in exchange-traded common stocks, preferred stocks, REITS, ETFs, ETNs, exchange-traded equity securities issued upon conversion of fixed income convertible securities, exchange-traded Work Out Securities and U.S. exchange-traded closed-end funds would provide for enhanced diversification of the Fund's portfolio and, in any case, would be Non-Principal Investments and would not exceed 20% of the Fund's net assets in the aggregate. With respect to any Fund holdings of exchange-traded equity securities issued upon conversion of fixed income convertible securities and exchange-traded Work Out Securities, such securities will not exceed 10% and 5%, respectively, of the Fund's total assets.

The Adviser and Sub-Adviser represent that the Fund generally will not actively invest in equity securities issued upon conversion of fixed income convertible securities

minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Exchange Traded Derivative Securities or Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Exchange Traded Derivative Securities or Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; and

(e) Each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.

²¹ For purposes of these exceptions, investments in equity securities that are OTC Work Out Securities, OTC equity securities issued upon conversion of fixed income convertible securities, or non-exchange-traded securities of other open-end investment companies (e.g., mutual funds) are excluded and are discussed further below.

or Work Out Securities, but may, at times, receive a distribution of such securities in connection with the Fund's holdings in other securities. Therefore, the Fund's holdings in equity securities issued upon conversion of fixed income convertible securities and Work Out Securities generally would not be acquired as the result of the Fund's voluntary investment decisions. The Adviser and Sub-Adviser represent that, under these circumstances, application of the weighting requirements of Nasdaq Rules 5735(b)(1)(A)(i)(c) and 5735(b)(1)(A)(ii)(c) and the minimum number of components requirements of Nasdaq Rules 5735(b)(1)(A)(i)(d) and 5735(b)(1)(A)(ii)(d) would impose an unnecessary burden on the Fund's ability to hold such equity securities.

The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(B)(i) that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of \$100 million or more. Instead, the Exchange proposes that components that in the aggregate account for at least 50% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of \$50 million or more. As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. In addition, at least 50% of the weight of the Fund's portfolio would continue to be subject to a substantial minimum (i.e., \$50 million) original principal amount outstanding. The Exchange believes this limitation would provide significant additional diversification to the Fund's investments in Fixed Income Securities, and reduce concerns that the Fund's investments in such securities would be readily susceptible to market manipulation.

The Fund will not comply with the requirements in Nasdaq Rule 5735(b)(1)(B)(iv) that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio meet one of the criteria specified in Nasdaq Rule 5735(b)(1)(B)(iv), because certain Private ABS/MBS cannot satisfy the criteria in Nasdaq Rule 5735(b)(1)(B)(iv).²² Instead, the Exchange proposes that the Fund's investments in Fixed Income Securities other than Private ABS/MBS will be required to comply with the requirements of Nasdaq Rule 5735(b)(1)(B)(iv). As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. The Exchange believes this limitation would provide additional diversification to the Fund's investments in Private ABS/MBS, and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

The Exchange notes that the Commission has previously approved the listing of Managed Fund Shares with similar investment objectives and strategies without imposing requirements that a certain percentage of such funds' securities meet one of the criteria corresponding to those set forth in Nasdaq Rule 5735(b)(1)(B)(iv).²³

²² Nasdaq Rule 5735(b)(1)(B)(iv) provides that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

²³ See the Recent Approval, *supra* note 18. In addition, *see, e.g.*, Exchange Act Release Nos. 67894 (September 20, 2012), 77 FR 59227 (September 26, 2012) (SR-BATS-2012-033) (order approving the listing and trading of shares of the

The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(B)(v) that Private ABS/MBS in the Fund's portfolio account, in the aggregate, for no more than 20% of the weight of the Fund's portfolio.²⁴ Instead, the Exchange proposes that, in order to enable the portfolio to be more diversified and provide the Fund with an opportunity to earn higher returns, the Fund may invest up to 50% of its total assets in the aggregate in Private ABS/MBS, provided that the Fund (1) may not invest more than 30% of its total assets in non-agency RMBS; (2) may not invest more than 25% of its total assets in non-agency CMBS and CLOs; and (3) may not invest more than 25% of its total assets in non-agency ABS.²⁵

With respect to the Fund's investments in up to 30% of its total assets in Private ABS/MBS that exceed the 20% of the weight of the Fund's portfolio that may be invested in Private ABS/MBS under Nasdaq Rule 5735(b)(1)(B)(v),²⁶ the following restrictions (which are identical to those set forth in the Recent Approval) will apply:

- Non-agency RMBS shall have a weighted average loan age of 84 months or more;
- Non-agency CMBS and CLOs shall have a weighted average loan age of 60 months or more; and

iShares Short Maturity Bond Fund); 70342 (September 6, 2013), 78 FR 56256 (September 12, 2013) (SR-NYSEArca-2013-71) (order approving the listing and trading of shares of the SPDR SSgA Ultra Short Term Bond ETF, SPDR SSgA Conservative Ultra Short Term Bond ETF and SPDR SSgA Aggressive Ultra Short Term Bond ETF).

²⁴ See note 13, supra.

²⁵ The Exchange notes that substantially the same proposal was set forth in the Recent Approval.

²⁶ See note 13, supra.

- Non-agency ABS shall have a weighted average loan age of 12 months or more.

In addition, as noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis.²⁷ The Exchange believes these limitations would provide additional diversification to the Fund's Private ABS/MBS investments and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

The Adviser and Sub-Adviser represent that the RMBS sector can be an important component of the Fund's investment strategy because of the potential for attractive risk-adjusted returns relative to other fixed income sectors and the potential to add significantly to the diversification in the Fund's portfolio. Similarly, the Private ABS/MBS sectors also have the potential for attractive risk-adjusted returns and added portfolio diversification.

The Fund's portfolio will not comply with the requirements set forth in Nasdaq Rule 5735(b)(1)(E).²⁸ Specifically, the Fund's investments in OTC derivatives may

²⁷ As noted above, the Fund's holdings in derivative instruments for hedging purposes would be excluded from the determination of compliance with this 2% limitation. The total gross notional value of the Fund's holdings in derivative instruments used to gain exposure to a specific asset is limited to 2% of the Fund's total assets.

²⁸ Nasdaq Rule 5735(b)(1)(E) provides that the portfolio may hold OTC derivatives, including forwards, options and swaps on commodities, currencies and financial instruments (e.g., stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing; however, on both an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in OTC derivatives. For purposes of calculating this limitation, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

exceed 20% of Fund assets, calculated as the aggregate gross notional value of such OTC derivatives. The Exchange proposes that up to 25% of the Fund's assets (calculated as the aggregate gross notional value) may be invested in OTC derivatives that are used to reduce currency, interest rate or credit risk arising from the Fund's investments (that is, "hedge"). The Fund's investments in OTC derivatives other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate or credit risk will be limited to 20% of the assets in the Fund's portfolio, calculated as the aggregate gross notional value of such OTC derivatives.

The Adviser and Sub-Adviser believe that it is important to provide the Fund with additional flexibility to manage risk associated with its investments. Depending on market conditions, it may be critical that the Fund be able to utilize available OTC derivatives for this purpose to attempt to reduce impact of currency, interest rate or credit fluctuations on Fund assets. Therefore, the Exchange believes it is appropriate to apply a limit of up to 25% of the Fund's assets to the Fund's investments in OTC derivatives (calculated as the aggregate gross notional value of such OTC derivatives), including forwards, options and swaps, that are used for hedging purposes, as described above.²⁹

As noted above, the Fund may hold equity securities that are Work Out Securities, which generally are traded OTC (but that may be traded on a U.S. or foreign exchange), exchange-traded or OTC equity securities issued upon conversion of fixed income

²⁹ In the Recent Approval, supra note 18, the Commission approved an exception to the applicable generic listing requirements relating to investments in OTC derivatives that was substantially the same as that proposed in this filing. See also Securities Exchange Act Release No. 80657 (May 11, 2017), 82 FR 22702 (May 17, 2017) (SR-NYSEArca-2017-09) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, Regarding Investments of the Janus Short Duration Income ETF Listed Under NYSE Arca Equities Rule 8.600).

convertible securities, and non-exchange-traded securities of other open-end investment company (e.g., mutual funds). The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) with respect to the Fund's investments in non-exchange-traded securities of open-end investment companies,³⁰ and notwithstanding that the Fund's holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities would not meet the requirements of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) and Nasdaq Rule 5735(b)(1)(A)(ii)(a) through (e). Investments in non-exchange-traded securities of open-end investment companies will not be principal investments of the Fund.³¹ Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term. With respect to any Fund holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities, such securities will not exceed 10% and 5%, respectively, of the Fund's total assets. The Adviser and Sub-Adviser represent that the Fund generally will not

³⁰ Nasdaq Rule 5735(b)(1)(A) specifies the equity securities accommodated by the generic criteria in Nasdaq Rule 5735(b)(1)(A), namely, U.S. Component Stocks (as described in Nasdaq Rule 5705); Non-U.S. Component Stocks (as described in Nasdaq Rule 5705); Exchange Traded Derivative Securities (as described in Nasdaq Rule 5735(c)(6)); and Linked Securities (as described in Nasdaq Rule 5710).

³¹ For purposes of this section of the filing, non-exchange-traded securities of other registered investment companies do not include money market funds, which are cash equivalents under Nasdaq Rule 5735(b)(1)(C) and for which there is no limitation in the percentage of the portfolio invested in such securities.

actively invest in OTC equity securities issued upon conversion of fixed income convertible securities or OTC Work Out Securities, but may, at times, receive a distribution of such securities in connection with the Fund's holdings in other securities. Therefore, the Fund's holdings in equity securities issued upon conversion of fixed income convertible securities and Work Out Securities generally would not be acquired as the result of the Fund's voluntary investment decisions.

With respect to investments in non-exchange-traded investment company securities, because such securities have a net asset value based on the value of securities and financial assets the investment company holds, the Exchange believes it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Nasdaq Rule 5735(b)(1)(A)(i).³²

The Exchange notes that Nasdaq Rule 5735(b)(1)(A)(i)(a) through (d) exclude application of those provisions to certain "Exchange Traded Derivative Securities" that are exchange-traded investment company securities, including Portfolio Depository Receipts (as described in Nasdaq Rule 5705(a)), Index Fund Shares (as described in Nasdaq Rule 5705(b)) and Managed Fund Shares (as described in Nasdaq Rule 5735).³³

³² The Commission has previously approved proposed rule changes under Section 19(b) of the Act for series of Managed Fund Shares that may invest in non-exchange traded investment company securities. See, e.g., the Recent Approval, supra note 18; Securities Exchange Act Release No. 78414 (July 26, 2016), 81 FR 50576 (August 1, 2016) (SR-NYSEArca-2016-79) (order approving listing and trading of shares of the Virtus Japan Alpha ETF under NYSE Arca Equities Rule 8.600).

³³ The Commission initially approved the Exchange's proposed rule change to provide exclusions for "Derivative Securities Products" (e.g., Index Fund Shares, Portfolio Depository Receipts and Managed Fund Shares) in Nasdaq Rules 5705(b)(3)(A)(i)(a) through (d) and 5705(b)(3)(A)(ii)(a) through (d). See Securities Exchange Act Release No. 69928 (July 3, 2013), 78 FR 41489 (July 10, 2013) (SR-NASDAQ-2013-094) (Notice of Filing and Immediate Effectiveness to

In the 2008 NYSEArca Approval Order, the Commission stated that “based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.” The Exchange notes that it would be difficult or impossible to apply to non-exchange-traded investment company securities the generic quantitative criteria (e.g., market capitalization, trading volume, or portfolio criteria) in Nasdaq Rule 5735(b)(1)(A)(i)(a) through (d) applicable to U.S. Component Stocks. For example, the requirement for U.S. Component Stocks in Nasdaq Rule 5735(b)(1)(A)(i)(b) that there be a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months, is tailored to exchange-traded securities (e.g., U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market. Moreover, application of such criteria would not serve the purpose served with respect to

Conform Rule 5705 Governing Exchange Traded Funds to the Listing Requirements of Another Market) (the “2013 Approval”). The 2013 Approval was intended to conform provisions of Nasdaq Rule 5705 to the comparable provisions of the corresponding NYSE Arca rule, as amended in 2008. See Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR-NYSEArca-2008-29) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units) (“2008 NYSEArca Approval Order”). The Commission subsequently approved generic criteria applicable to the listing and trading of Managed Fund Shares, including exclusions for Exchange Traded Derivative Securities and Linked Securities in Nasdaq Rule 5735(b)(1)(A)(i)(a) through (d) in Securities Exchange Act Release No. 78918 (September 23, 2016), 81 FR 67033 (September 29, 2016) (SR-NASDAQ-2016-104) (Order Granting Approval of a Proposed Rule Change To Amend Nasdaq Rule 5735 To Adopt Generic Listing Standards for Managed Fund Shares). See also Securities Exchange Release No. 78616 (August 18, 2016), 81 FR 57968 (August 24, 2016) (Notice of Filing of Proposed Rule Change to Amend Nasdaq Rule 5735 To Adopt Generic Listing Standards for Managed Fund Shares).

U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S. Component Stocks held by series of Managed Fund Shares.

The Exchange notes that the Commission has previously approved listing and trading of issues of Managed Fund Shares that may invest in equity securities that are non-exchange-traded securities of other open-end investment companies notwithstanding that a fund would not meet requirements corresponding to those of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) with respect to such fund's investments in such securities.³⁴ Thus, the Exchange believes that it is appropriate to permit the Fund to invest in non-exchange-traded open-end management investment company securities, as described above.

Deviations from the generic requirements are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in manner that is consistent with the principles of Section 6(b)(5) of the Act. In addition, the proposed deviations from the generic requirements and proposed alternative requirements set forth in this filing are consistent with those set forth in the Recent Approval. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

³⁴ See, e.g., the Recent Approval, *supra* note 18; Securities Exchange Act Release No. 83319 (May 24, 2018) (SR-NYSEArca-2018-15) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF Under NYSE Arca Rule 8.600-E).

The Exchange notes that, other than Nasdaq Rule 5735(b)(1)(A)(i), (b)(1)(A)(ii), (b)(1)(B)(i), (b)(1)(B)(iv), (b)(1)(B)(v), and (b)(1)(E), as described above, the Fund's portfolio will meet all other requirements of Nasdaq Rule 5735.

Availability of Information

The Fund's website (www.ftportfolios.com) will include the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and midpoint of the bid/ask spread at the time of calculation of such NAV (the "Bid/ Ask Price"),³⁵ and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio as defined in Nasdaq Rule 5735(c)(2) that forms the basis for the Fund's calculation of NAV at the end of the business day.³⁶

³⁵ The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

³⁶ Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

On a daily basis, the Fund will disclose the information required under Nasdaq Rule 5735(c)(2) to the extent applicable. The website information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of the Fund. Authorized Participants may refer to the basket composition file for information regarding Fixed Income Securities, and any other instrument that may comprise the Fund's basket on a given day.

Investors can also obtain the Trust's Statement of Additional Information ("SAI") and Form N-CEN and the Fund's Shareholder Reports and Form N-CSR. The SAI and the Fund's Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N-CSR and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

Intra-day and closing price information regarding exchange-traded options will be available from the exchange on which such instruments are traded. Intra-day and closing price information regarding Fixed Income Securities will be available from major market data vendors. Price information relating to OTC options, forwards and swaps will be available from major market data vendors. Intra-day price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. Intra-day and other price information for the Fixed Income Securities in which the Fund will invest will be available through subscription

services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other market participants. Additionally, the Trade Reporting and Compliance Engine (“TRACE”) of the Financial Industry Regulatory Authority (“FINRA”) will be a source of price information for corporate bonds, and Private ABS/MBS, to the extent transactions in such securities are reported to TRACE.³⁷ Trade price and other information relating to municipal bonds is available through the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access (“EMMA”) system. Non-exchange-traded open-end investment company securities are typically priced once each business day and their prices will be available through the applicable fund’s website or from major market data vendors. Price information regarding U.S. government securities, bank loans, Private ABS/MBS, cash equivalents and short-term instruments with maturities of three months or more generally may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. Information relating to weighted average loan age for Private ABS/MBS is widely available from major market data vendors such as Bloomberg.

Information regarding market price and trading volume of the Shares, ETFs, ETNs, common stocks, preferred stocks, REITs, equity securities issued upon conversion of fixed income convertible securities, Work Out Securities and closed-end funds will be

³⁷ Broker-dealers that are FINRA member firms have an obligation to report transactions in specified debt securities to TRACE to the extent required under applicable FINRA rules. Generally, such debt securities will have at issuance a maturity that exceeds one calendar year. For Fixed Income Securities that are not reported to TRACE, (i) intra-day price quotations will generally be available from broker-dealers and trading platforms (as applicable) and (ii) price information will be available from feeds from market data vendors, published or other public sources, or online information services, as described above.

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 Shares, ETFs, ETNs, closed-end funds, REITs, certain common stocks, certain preferred stocks, certain equity securities issued upon conversion of fixed income convertible securities, and certain Work Out Securities will be available via the Consolidated Tape Association ("CTA") high-speed line. Exchange-traded options quotation and last sale information for options cleared via the Options Clearing Corporation ("OCC") are available via the Options Price Reporting Authority ("OPRA"). In addition, the Intraday Indicative Value ("IIV"), as defined in Nasdaq Rule 5735(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Regular Market Session.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rule 4120(a)(12). Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the other assets constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Fund's Shares also

will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m., E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

With the exception of the requirements of Nasdaq Rule 5735(b)(1)(A)(i), (b)(1)(A)(ii), (b)(1)(B)(i), (b)(1)(B)(iv), (b)(1)(B)(v), and (b)(1)(E), as described above in "Application of Generic Listing Requirements," the Shares of the Fund will conform to the initial and continued listing criteria under Nasdaq Rule 5735. Consistent with Nasdaq Rule 5735(d)(2)(B)(ii), the Adviser and Sub-Adviser will 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 Fund's portfolio.

The Exchange represents that, for continued listing, the Fund will be in compliance with Rule 10A-3³⁸ under the Act. 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. The Fund's investments will be consistent with its investment goal and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

³⁸

17 CFR 240.10A-3.

Surveillance

The Exchange represents that trading in the Shares will continue to be subject to the existing trading surveillances, administered by the Exchange and also by FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.³⁹

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.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-traded options and certain exchange-traded futures, ETFs, ETNs, closed-end funds, certain common stocks, certain preferred stocks, certain REITs, certain equity securities issued upon conversion of fixed income convertible securities and certain Work Out Securities with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and

³⁹ FINRA conducts cross-market surveillance on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

other entities.⁴⁰ In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. In addition, 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 TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

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

All statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange.

The issuer must notify the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

Information Circular

⁴⁰ For a list of the current members of ISG, see www.isgportal.org. 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 (“CSSA”).

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: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) 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; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's website.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁴¹ that an exchange have rules that are designed to prevent fraudulent and

⁴¹ 15 U.S.C. 78f(b)(5).

manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares are listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange has in place surveillance procedures that are adequate to properly monitor Exchange trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-traded options and certain exchange-traded futures, ETFs, ETNs, closed-end funds, certain common stocks, certain preferred stocks, certain REITs, certain equity securities issued upon conversion of fixed income convertible securities and certain Work Out Securities with other markets and other entities that are members of ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities. The Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. In addition, 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 TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes

in connection with trading in the Shares. The Adviser and Sub-Adviser are not registered as broker-dealers. The Adviser is affiliated with First Trust Portfolios L.P., a broker-dealer, and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the composition and/or changes to the portfolio.

The Exchange notes that, other than Nasdaq Rule 5735(b)(1)(A)(i), (b)(1)(A)(ii), (b)(1)(B)(i), (b)(1)(B)(iv), (b)(1)(B)(v), and (b)(1)(E), as described above, the Fund's portfolio will meet all other requirements of Nasdaq Rule 5735. Additionally, the Exchange notes that the proposed rule change set forth in this filing is based on a very similar proposed rule change that was recently approved by the Commission with respect to another actively-managed ETF for which the Adviser serves as investment adviser and the Sub-Adviser serves as investment sub-adviser.⁴²

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares, ETFs, ETNs, closed-end funds, certain

⁴² See note 18, supra.

REITs, certain common stocks, certain preferred stocks, certain equity securities issued upon conversion of fixed income convertible securities, and certain Work Out Securities will be available via the CTA high-speed line. Exchange-traded options quotation and last sale information for options cleared via the OCC are available via OPRA. The Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rule 4120(a)(12), or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Fund's Shares also will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, NAV, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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 additional type of actively-managed exchange-traded product that generally will principally hold fixed income securities and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. In addition, as noted above,

investors will have ready access to information regarding the Fund's holdings, NAV, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Deviations from the generic requirements, as described above, are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in a manner that is consistent with the principles of Section 6(b)(5) of the Act. In addition, the proposed deviations from the generic requirements and proposed alternative requirements set forth in this filing are consistent with those set forth in the Recent Approval. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

As noted above, the Fund will not comply with the requirements set forth in Nasdaq Rule 5735(b)(1)(A)(i) and (b)(1)(A)(ii) with respect to the Fund's investments in equity securities. Instead, the Exchange proposes that the Fund's investments in equity securities will meet the requirements of Nasdaq Rule 5735(b)(1)(A) with the exception of Nasdaq Rule 5735(b)(1)(A)(i)(c) and (d) (with respect to U.S. Component Stocks) and Nasdaq Rule 5735(b)(1)(A)(ii)(c) and (d) (with respect to Non-U.S. Component Stocks).⁴³ The Exchange believes it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in such equity securities do not comply with the requirements set forth in Nasdaq Rules 5735(b)(1)(A)(i) and 5735(b)(1)(A)(ii) in that any Fund investment in exchange-traded common stocks, preferred stocks, REITS, ETFs, ETNs, U.S. exchange-traded closed-end

⁴³ See notes 19 and 20, supra. See also note 21, supra.

funds, exchange-traded equity securities issued upon conversion of fixed income convertible securities, and exchange-traded Work Out Securities would provide for enhanced diversification of the Fund's portfolio. Such securities would be Non-Principal Investments, not exceeding 20% of the Fund's net assets in the aggregate.

The Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(B)(i) that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of \$100 million or more. Instead, the Exchange proposes that components that in the aggregate account for at least 50% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of \$50 million or more. As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. In addition, at least 50% of the weight of the Fund's portfolio would continue to be subject to a substantial minimum (i.e., \$50 million) original principal amount outstanding. The Exchange believes this limitation would provide significant additional diversification to the Fund's investments in Fixed Income Securities, and reduce concerns that the Fund's investments in such securities would be readily susceptible to market manipulation.

The Exchange proposes that Private ABS/MBS will not be required to comply with the requirements of Nasdaq Rule 5735(b)(1)(B)(iv) because certain Private ABS/MBS cannot satisfy the criteria in Nasdaq Rule 5735(b)(1)(B)(iv). Instead, the Exchange proposes that the Fund's investments in Fixed Income Securities other than Private ABS/MBS will be required to comply with the requirements of Nasdaq Rule 5735(b)(1)(B)(iv). The Exchange believes that this is appropriate because Nasdaq Rule

5735(b)(1)(B)(iv) does not appear to be designed for structured finance vehicles such as Private ABS/MBS. As noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP basis. The Exchange believes this limitation would provide additional diversification to the Fund's investments in Private ABS/MBS, and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

As noted above, the Fund will not comply with the requirement in Nasdaq Rule 5735(b)(1)(B)(v) that Private ABS/MBS in the Fund's portfolio account, in the aggregate, for no more than 20% of the weight of the Fund's portfolio. Instead, the Exchange proposes that, in order to enable the portfolio to be more diversified and provide the Fund with an opportunity to earn higher returns, the Fund may invest up to 50% of its total assets in the aggregate in Private ABS/MBS, provided that the Fund (1) may not invest more than 25% of its total assets in non-agency ABS; (2) may not invest more than 30% of its total assets in non-agency RMBS; and (3) may not invest more than 25% of its total assets in non-agency CMBS and CLOs. With respect to the Fund's investments in up to 30% of its total assets in Private ABS/MBS that exceed the 20% of the weight of the Fund's portfolio that may be invested in Private ABS/MBS under Nasdaq Rule 5735(b)(1)(B)(v), the Fund's holdings in Private ABS/MBS will be subject to minimum weighted average loan age restrictions described above.⁴⁴ In addition, as noted above, the Fund may not invest more than 2% of its total assets in any one Fixed Income Security (excluding U.S. government securities and TIPS) on a per CUSIP

⁴⁴ See note 13 and accompanying text, supra.

basis.⁴⁵ The Exchange believes these limitations would provide additional diversification to the Fund's Private ABS/MBS investments and reduce concerns that the Fund's investment in such securities would be readily susceptible to market manipulation.

The Exchange believes it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in such Private ABS/MBS do not comply with the requirements set forth in Nasdaq Rule 5735(b)(1)(B)(v) in that the Fund's investment in Private ABS/MBS is expected to provide the Fund with benefits associated with increased diversification, as Private ABS/MBS investments tend to be less correlated to interest rates than many other fixed income securities. The Fund's investment in Private ABS/MBS will be subject to the Fund's liquidity procedures as adopted by the Trust Board, and the Adviser and Sub-Adviser do not expect that investments in Private ABS/MBS of up to 50% of the total assets of the Fund will have any material impact on the liquidity of the Fund's investments.

The Adviser and Sub-Adviser represent that the RMBS sector can be an important component of the Fund's investment strategy because of the potential for attractive risk-adjusted returns relative to other fixed income sectors and the potential to add significantly to the diversification in the Fund's portfolio. Similarly, the Private ABS/MBS sectors also have the potential for attractive risk-adjusted returns and added portfolio diversification.

The Exchange believes the loan age parameters described above are appropriate for the corresponding Private ABS/MBS; the 84, 60 and 12 month time frames take into

⁴⁵ See note 27, supra.

account that the longer Private ABS/MBS continue to trade, the more price discovery has occurred in the market and the more opportunity there has been for market participants to perform due diligence in understanding and evaluating the underlying loans for such securities.

With respect to non-agency RMBS, a weighted average loan age of 84 months accommodates investment in well-seasoned securities that are continuing to trade with resilient pricing notwithstanding events during the market crisis of 2008-2010, during which loan defaults drastically impacted pricing in non-agency RMBS. Pricing in such securities is generally more reliable than RMBS with a lower loan age in that pricing is no longer reliant on market expectations but on actual post-crisis loan performance.

With respect to non-agency CMBS, a weighted average loan age of 60 months would include securities for which there is a known track record regarding cash flows and default rates for loans underlying real estate and other assets underlying CMBS. A five year loan age facilitates pricing based on actual loan performance rather than default projections. Similarly, for non-agency CLOs, a weighted average loan age of 60 months provides the opportunity for market participants to evaluate data regarding the bank loans underlying the CLOs and to assess how the loans are actually being used--for example, to implement corporate strategy or for capital usage--rather than relying on pro forma statements regarding the loans.

With respect to non-agency ABS, a weighted average loan age of 12 months provides an appropriately limited time frame for market participants to assess the likely trajectory of expected defaults (for example, for sub-prime auto loans). The loans underlying non-agency ABS are typically of much shorter duration than other Private

ABS/MBS. Because such loans are more likely to default within a short time after issuance, a one-year minimum loan age can be expected to provide a sufficient time frame for market participants to assess the reliability of loan pricing for loans underlying non-agency ABS.

As noted above, the Fund's portfolio will not comply with the requirements set forth in Nasdaq Rule 5735(b)(1)(E). The Exchange proposes that up to 25% of the Fund's assets (calculated as the aggregate gross notional value) may be invested in OTC derivatives that are used to reduce currency, interest rate or credit risk arising from the Fund's investments (that is, "hedge"), and that the Fund's investments in OTC derivatives other than OTC derivatives used to hedge the Fund's portfolio against currency, interest rate or credit risk will be limited to 20% of the assets in the Fund's portfolio, calculated as the aggregate gross notional value of such OTC derivatives. As noted above, the Fund will not use derivative instruments to gain exposure to Private ABS/MBS, and derivative instruments linked to such securities will be used for hedging purposes only.

The Exchange believes it is appropriate and in the public interest to approve listing and trading of Shares of the Fund notwithstanding that the Fund's holdings in OTC derivatives do not comply with the requirements set forth in Nasdaq Rule 5735(b)(1)(E) in that, depending on market conditions, it may be critical that the Fund be able to utilize available OTC derivatives to attempt to reduce impact of currency, interest rate or credit fluctuations on Fund assets. Therefore, the Exchange believes it is appropriate to apply a limit of up to 25% of the Fund's assets to the Fund's investments in OTC derivatives (calculated as the aggregate gross notional value of such OTC

derivatives), including forwards, options and swaps, that are used for hedging purposes, as described above.

The Adviser and Sub-Adviser represent that OTC derivatives can be tailored to hedge the specific risk arising from the Fund's investments and frequently may be a more efficient hedging vehicle than listed derivatives. For example, the Fund could obtain an OTC foreign currency derivative in a notional amount that exactly matches the notional amount of the Fund's investments. If the Fund were limited to investing up to 20% of assets in OTC derivatives, the Fund might have to "over hedge" or "under hedge" if round lot sizes in listed derivatives were not available. In addition, for example, an OTC CDX option can be structured to provide protection tailored to the Fund's credit exposure and can be a more efficient way to hedge credit risk with respect to specific exposures than listed derivatives. Similarly, OTC interest rate derivatives can be more effective hedges of interest rate exposure because they can be customized to match the basis risk arising from the term of the investments held by the Fund.

Because the Fund, in furtherance of its investment objective, may invest a substantial percentage of its investments in foreign currency denominated Fixed Income Securities, the 20% limit in Nasdaq Rule 5735(b)(1)(E) could result in the Fund being unable to fully pursue its investment objective while attempting to sufficiently mitigate investment risks. The inability of the Fund to adequately hedge its holdings would effectively limit the Fund's ability to invest in certain instruments, or could expose the Fund to additional investment risk. For example, if the Fund's assets (on a gross notional value basis) were \$100 million and no listed derivative were suitable to hedge the Fund's risk, under the generic standards the Fund would be limited to holding up to \$20 million

gross notional value in OTC derivatives (\$100 million * 20%). Accordingly, the maximum amount the Fund would be able to invest in foreign currency denominated Fixed Income Securities while remaining adequately hedged would be \$20 million. The Fund then would hold \$60 million in assets that could not be hedged, other than with listed derivatives, which, as noted above, might not be sufficiently tailored to the specific instruments to be hedged.

In addition, by applying the 20% limitation in Nasdaq Rule 5735(b)(1)(E), the Fund would be less able to protect its holdings from more than one risk simultaneously. For example, if the Fund's assets (on a gross notional basis) were \$100 million and the Fund held \$20 million in foreign currency denominated Fixed Income Instruments with two types of risks (e.g., currency and credit risk) which could not be hedged using listed derivatives, the Fund would be faced with the choice of either holding \$20 million aggregate gross notional value in OTC derivatives to mitigate one of the risks while passing the other risk to its shareholders, or, for example, holding \$10 million aggregate gross notional value in OTC derivatives on each of the risks while passing the remaining portion of each risk to the Fund's shareholders.

The Adviser and Sub-Adviser believe that it is in the best interests of the Fund's shareholders for the Fund to be allowed to reduce the currency, interest rate or credit risk arising from the Fund's investments using the most efficient financial instrument. While certain risks can be hedged via listed derivatives, OTC derivatives (such as forwards, options and swaps) can be customized to hedge against precise risks. Accordingly, the Adviser and Sub-Adviser believe that OTC derivatives may frequently be a more efficient hedging vehicle than listed derivatives. Therefore, the Exchange believes that

increasing the percentage limit in Nasdaq Rule 5735(b)(1)(E), as described above, to the Fund's investments in OTC derivatives, including forwards, options and swaps, that are used specifically for hedging purposes would help protect investors and the public interest.

As noted above, the Fund's portfolio will not meet the requirements of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) with respect to the Fund's investments in non-exchange-traded securities of open-end investment companies, and, with respect to the Fund's holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities, will not meet the requirements of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) and Nasdaq Rule 5735(b)(1)(A)(ii)(a) through (e). The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) with respect to the Fund's investments in non-exchange-traded securities of open-end investment companies, and notwithstanding that the Fund's holdings of OTC equity securities issued upon conversion of fixed income convertible securities and OTC Work Out Securities would not meet the requirements of Nasdaq Rule 5735(b)(1)(A)(i)(a) through (e) and Nasdaq Rule 5735(b)(1)(A)(ii)(a) through (e). Investments in non-exchange-traded securities of open-end investment companies will not be principal investments of the Fund.⁴⁶ Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term.

⁴⁶ See note 31, *supra*.

With respect to any Fund holdings of exchange-traded or OTC equity securities issued upon conversion of fixed income convertible securities and Work Out Securities, such securities will not exceed 10% and 5%, respectively, of the Fund's total assets. The Adviser and Sub-Adviser represent that the Fund generally will not actively invest in equity securities issued upon conversion of fixed income convertible securities or Work Out Securities, but may, at times, receive a distribution of such securities in connection with the Fund's holdings in other securities. Therefore, the Fund's holdings in equity securities issued upon conversion of fixed income convertible securities and Work Out Securities generally would not be acquired as the result of the Fund's voluntary investment decisions.

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 shares of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

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 notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that generally will principally hold fixed income securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁴⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁴⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

⁴⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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. Please include File Number SR-NASDAQ-2020-005 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-NASDAQ-2020-005. 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 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 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 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-NASDAQ-2020-005 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.⁴⁹

Jill M. Peterson
Assistant Secretary

⁴⁹ 17 CFR 200.30-3(a)(12).