

Required fields are shown with yellow backgrounds and asterisks.

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|---|---|--|---|--|---|
| Page 1 of * 28  | SECURITIES AND EXCHANGE COMMISSION<br>WASHINGTON, D.C. 20549<br>Form 19b-4      |  | File No.* SR - 2020 - * 014   | Amendment No. (req. for Amendments *)                        |   |
| Filing by The Nasdaq Stock Market LLC<br>Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934   |   |  |   |  |   |
| Initial *<br><input checked="" type="checkbox"/>  | Amendment *<br><input type="checkbox"/>   | Withdrawal<br><input type="checkbox"/>                       | Section 19(b)(2) *<br><input type="checkbox"/>                                    | Section 19(b)(3)(A) *<br><input checked="" type="checkbox"/> | Section 19(b)(3)(B) *<br><input type="checkbox"/> |
| Pilot<br><input type="checkbox"/>   | Extension of Time Period<br>for Commission Action *<br><input type="checkbox"/> | Date Expires *<br><input type="text"/>                       | Rule  |  |   |
|   |   |  | <input type="checkbox"/> 19b-4(f)(1)  | <input type="checkbox"/> 19b-4(f)(4)                         |   |
|   |   |  | <input type="checkbox"/> 19b-4(f)(2)  | <input type="checkbox"/> 19b-4(f)(5)                         |   |
|   |   |  | <input type="checkbox"/> 19b-4(f)(3)  | <input 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<br>to the Securities Exchange Act of 1934 |  |   |
| Section 806(e)(1) *<br><input type="checkbox"/>   |   | Section 806(e)(2) *<br><input type="checkbox"/>              |   | Section 3C(b)(2) *<br><input type="checkbox"/>               |   |
| Exhibit 2 Sent As Paper Document<br><input type="checkbox"/>  |   | Exhibit 3 Sent As Paper Document<br><input type="checkbox"/> |   |  |   |
| <b>Description</b>  |   |  |   |  |   |
| Provide a brief description of the action (limit 250 characters, required when Initial is checked *).   |   |  |   |  |   |
| A proposed rule change relating to the First Trust California Municipal High Income ETF and the First Trust Municipal High Income ETF   |   |  |   |  |   |
| <b>Contact Information</b>  |   |  |   |  |   |
| Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.          |   |  |   |  |   |
| First Name * Jonathan   |   | Last Name * Cayne  |   |  |   |
| Title * Principal Associate General Counsel   |   |  |   |  |   |
| E-mail * jonathan.cayne@nasdaq.com  |   |  |   |  |   |
| Telephone * (301) 978-8493  |   | Fax  |   |  |   |
| <b>Signature</b>  |   |  |   |  |   |
| 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  | 03/27/2020  | EVP and Chief Legal Counsel                                  |   |  |   |
| By  | John Zecca  |  |   |  |   |
| (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. |   |  |   |  |   |
| <a href="mailto:john.zecca@nasdaq.com">john.zecca@nasdaq.com</a>  |   |  |   |  |   |

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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

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

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

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

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

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

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Exhibit Sent As Paper Document

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

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

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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

**Partial Amendment**

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

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change relating to the First Trust California Municipal High Income ETF (the “California Fund”) and the First Trust Municipal High Income ETF (the “Municipal Fund”), each a series of First Trust Exchange-Traded Fund III (the “Trust”), the shares of which have been approved by the Commission for listing and trading under Nasdaq Rule 5735 (“Managed Fund Shares”). The California Fund and the Municipal Fund are each, a “Fund” and collectively, the “Funds.” The shares of the Funds are collectively referred to herein as the “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.

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

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

Questions and comments on the proposed rule change may be directed to:

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

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

a. Purpose

The Commission has approved the listing and trading of Shares under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange.<sup>3</sup> The Exchange believes the proposed rule change reflects no significant

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<sup>3</sup> The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR-NASDAQ-2008-039). The Commission previously approved the listing and trading of the Shares of each Fund. With respect to the California Fund, see Securities Exchange Act Release No. 80745 (May 23, 2017), 82 FR 24755 (May 30, 2017) (SR-NASDAQ-2017-033) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the First Trust California Municipal High Income ETF) (the "California 2017 Release"). With respect to the Municipal Fund, see Securities Exchange Act Release No. 78913 (September 23, 2016), 81 FR 69109 (October 5, 2016) (SR-NASDAQ-2016-002) (Notice of Filing of Amendment No. 3, and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 3, To List and Trade Shares of the First Trust Municipal High Income ETF of First Trust Exchange-Traded Fund III) (the "Municipal 2016 Release"). Subsequently, the Commission approved a proposed rule change relating to the Municipal Fund, the primary purpose of which was to modify certain representations included in the Municipal 2016 Release. See Securities Exchange Act Release No. 81265 (July 31, 2017), 82 FR 36460 (August 4, 2017) (SR-NASDAQ-2017-038) (Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments No. 1 and 2, Relating to the First Trust Municipal High Income ETF) (the "Municipal 2017 Release"). The Municipal 2016 Release, together with the Municipal 2017 Release, are referred to collectively as the "Municipal 2016/2017 Release." In 2019, the Commission approved a proposed rule change relating to each Fund, the primary purpose of which was to modify certain representations included in the Municipal 2017 Release and the California 2017 Release. See Securities Exchange Act Release No. 85666 (April 16, 2019), 84 FR 16739 (April 22, 2019) (SR-NASDAQ-2019-021) (Notice of Filing and

issues not previously addressed in the Prior Releases.

Each Fund is an actively-managed exchange-traded fund (“ETF”). The Shares of each Fund are offered by the Trust, which was established as a Massachusetts business trust on January 9, 2008. The Trust, which is registered with the Commission as an investment company under the Investment Company Act of 1940 (the “1940 Act”), has, with respect to each Fund, filed a post-effective amendment to its registration statement on Form N-1A (“Registration Statement”) with the Commission.<sup>4</sup> Each Fund is a series of the Trust.

As described in more detail below, the purpose of this proposed rule change is to delete a representation that was set forth (a) with respect to the California Fund, the California 2017 Release (and not subsequently modified in the 2019 Release) and (b) with respect to the Municipal Fund, the Municipal 2016 Release (and not subsequently modified in the Municipal 2017 Release or the 2019 Release) relating to weighted average maturity (i.e., the “Average Maturity Representation,” as defined below) in order to provide the Adviser with additional flexibility in constructing and managing the

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Immediate Effectiveness of Proposed Rule Change to the First Trust California Municipal High Income ETF and the First Trust Municipal High Income ETF (the “2019 Release”). The Municipal 2016/2017 Release, together with the 2019 Release, are referred to collectively as the “Municipal Prior Release.” The California 2017 Release, together with the 2019 Release, are referred to collectively as the “California Prior Release.” The California Prior Release and the Municipal Prior Release are each, a “Prior Release” and collectively, the “Prior Releases.”

<sup>4</sup> See, with respect to each Fund, Post-Effective Amendment No. 103 to Registration Statement on Form N-1A for the Trust, dated November 27, 2019 (File Nos. 333-176976 and 811-22245). The descriptions of the Funds and the Shares contained herein are based, in part, on information in the Registration Statement. First Trust Advisors L.P. (the “Adviser”) represents that the Adviser will not implement the changes described herein until the instant proposed rule change is operative.

applicable Fund's portfolio. The Exchange believes that the proposed modification would provide each Fund with greater ability to select "Municipal Securities" (as defined below) that would support such Fund's investment goals and should not raise concerns. In this regard, the Exchange notes that the Commission has previously approved other proposed rule changes involving ETFs investing in municipal securities that did not include a representation comparable to the Average Maturity Representation.<sup>5</sup> In addition, the generic listing standards for actively-managed ETFs that invest in fixed income securities (the "Fixed Income GLS") do not impose a requirement relating to the average maturity of securities in a portfolio.<sup>6</sup> Further, the 2019 Release includes certain representations that relate to each Fund's diversity, liquidity and mitigation of risks associated with manipulation that would not be affected by the proposed change.<sup>7</sup>

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<sup>5</sup> See, e.g., Securities Exchange Act Release Nos. 84381 (October 5, 2018), 83 FR 51752 (October 12, 2018) (SR-NYSEArca-2018-72) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Listing and Trading of Shares of the First Trust Ultra Short Duration Municipal ETF Under NYSE Arca Rule 8.600-E); 84379 (October 5, 2018), 83 FR 51724 (October 12, 2018) (SR-NYSEArca-2018-73) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Listing and Trading of Shares of the First Trust Short Duration Managed Municipal ETF Under NYSE Arca Rule 8.600-E); 83982 (August 29, 2018), 83 FR 45168 (September 5, 2018) (SR-NYSEArca-2018-62) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Listing and Trading of Shares of the American Century Diversified Municipal Bond ETF Under NYSE Arca Rule 8.600-E); and 71913 (April 9, 2014), 79 FR 21333 (April 15, 2014) (SR-NASDAQ-2014-019) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of the Shares of the First Trust Managed Municipal Fund of First Trust Exchange-Traded Fund III) (collectively, the "Other Municipal Approvals").

<sup>6</sup> See Nasdaq Rule 5735(b)(1)(B).

<sup>7</sup> See *infra* footnote 12 and accompanying text.

As described in the California Prior Release,<sup>8</sup> the primary investment objective of the California Fund is to seek to provide current income that is exempt from regular federal income taxes and California income taxes, and its secondary objective is long-term capital appreciation. As described in the Municipal Prior Release,<sup>9</sup> the primary investment objective of the Municipal Fund is to generate current income that is exempt from regular federal income taxes, and its secondary objective is long-term capital appreciation. Under normal market conditions, each Fund seeks to achieve its investment objectives by investing at least 80% of its net assets (including investment borrowings) in municipal debt securities (referred to as “Municipal Securities”) that pay interest that is exempt from regular federal income taxes (and, in the case of the California Fund, California income taxes).

As discussed in the Prior Release for each Fund,<sup>10</sup> the applicable Fund may invest in Municipal Securities of any maturity. However, each Prior Release<sup>11</sup> also states that under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, the weighted average maturity of the applicable Fund will be less than or equal to 14 years (the “Average Maturity Representation”). With respect to each Fund, the Average Maturity Representation has not previously been modified.

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<sup>8</sup> See the California 2017 Release and the 2019 Release.

<sup>9</sup> See the Municipal 2016 Release and the 2019 Release.

<sup>10</sup> See, with respect to the California Fund, the California 2017 Release and with respect to the Municipal Fund, the Municipal 2016 Release.

<sup>11</sup> See, with respect to the California Fund, the California 2017 Release and with respect to the Municipal Fund, the Municipal 2016 Release.

In order to provide each Fund with greater ability to select Municipal Securities that would support such Fund's investment goals, the Exchange is proposing that, going forward, the Average Maturity Representation be deleted. The Exchange does not believe that this change should raise concerns. As noted above, the Other Municipal Approvals did not include a similar representation and the Fixed Income GLS do not impose a comparable requirement. Further, the Exchange notes that the 2019 Release includes certain representations that relate to each Fund's diversity, liquidity and mitigation of risks associated with manipulation that would not be affected by the proposed change.<sup>12</sup>

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<sup>12</sup> As noted in the 2019 Release, under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, (a) for each Fund, no component fixed income security (excluding specified U.S. government securities) would represent more than 15% of such Fund's net assets, and the five most heavily weighted component fixed income securities in each Fund's portfolio (excluding U.S. government securities) would not, in the aggregate, account for more than 25% of such Fund's net assets; (b) each Fund's portfolio of Municipal Securities would continue to be diversified among a minimum of 30 non-affiliated issuers; (c) component securities that in the aggregate account for at least 90% of the weight of each Fund's portfolio of Municipal Securities would continue to be exempted securities as defined in Section 3(a)(12) of the Act; and (d) each Fund's investments in Municipal Securities would continue to provide exposure (based on dollar amount invested) to at least 10 different industries (with no more than 25% of the value of such Fund's net assets comprised of Municipal Securities that provide exposure to any single industry). In addition, each Fund's investments in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, would continue to be limited to 15% of such Fund's net assets and, subject to certain exceptions, each Fund would not invest 25% or more of the value of its total assets in securities of issuers in any one industry. Further, with respect to the Municipal Fund, under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, such Fund's investments in Municipal Securities would continue to provide exposure (based on dollar amount invested) to at least 15 different states (with no more than 30% of the value of such Fund's net assets comprised of Municipal Securities that provide exposure to any single state). The foregoing representations set forth in this footnote 12 are referred to collectively as the "2019 Representations."



Continued Listing Representations

For each Fund, all statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or intraday indicative values, or (d) the applicability of Exchange listing rules shall constitute continued listing requirements for listing the applicable Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by a 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 a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under the Nasdaq 5800 Series.

The Adviser represents that there would be no change to either Fund's investment objectives. Except as provided herein, with respect to each Fund, all currently effective representations (i.e., representations that have not previously been modified or superseded) made in the applicable Prior Releases (collectively, the "Prior Release Representations") would remain unchanged, including but not limited to such currently effective representations regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or intraday indicative values, or (d) the applicability of Exchange listing rules.<sup>13</sup> Except for the generic listing provisions of Nasdaq Rule 5735(b)(1) (the

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<sup>13</sup> The Exchange notes, however, that certain statements in the Prior Releases include references that are no longer current and has not specifically updated such statements in this filing. For example, the Municipal 2016 Release includes references to Form N-SAR (under the heading "Availability of Information") and

“generic listing standards”),<sup>14</sup> the Funds and the Shares would continue to comply with the requirements applicable to Managed Fund Shares under Nasdaq Rule 5735.

b. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The purpose of this proposed rule change is to delete the Average Maturity Representation in order to provide the Adviser with additional flexibility in constructing and managing each Fund’s portfolio. The Exchange believes that the proposed modification would provide each Fund with greater ability to select Municipal Securities that would support such Fund’s investment goals. Except as provided herein, with respect to each Fund, all currently effective Prior Release Representations would remain unchanged. Except for the generic listing standards,<sup>15</sup> the Funds and the Shares would

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a “minimum price variation” provision in Nasdaq Rule 5735(b)(3) (under the heading “Trading Rules”), neither of which is currently in effect.

<sup>14</sup> With respect to the Municipal Fund, the generic listing standards were specifically discussed in the Municipal 2017 Release and the 2019 Release. With respect to the California Fund, the generic listing standards were specifically discussed in the California 2017 Release and the 2019 Release. The Exchange notes, however, that references to Nasdaq Rule 5735(b)(1)(B)(v) in the Municipal 2017 Release and the California 2017 Release did not reflect a change to such rule that was effected in 2019. See Securities Exchange Release No. 86399 (July 17, 2019), 84 FR 35446 (July 23, 2019) (SR-NASDAQ-2019-054).

<sup>15</sup> See supra note 14.

continue to comply with the requirements applicable to Managed Fund Shares under Nasdaq Rule 5735.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares would continue to be listed and traded on the Exchange pursuant to Nasdaq Rule 5735. The Exchange also notes the continued listing representations set forth above. The Exchange represents that trading in the Shares would continue to be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

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 deletion of the Average Maturity Representation is intended to provide each Fund with greater ability to select from Municipal Securities that would support such Fund’s investment goals. The Exchange notes that the 2019 Representations would not be affected by the proposed modification. Additionally, the Exchange notes that the Other Municipal Approvals did not include a representation similar to the Average Maturity Representation and the Fixed Income GLS do not impose a comparable requirement.

In addition, a large amount of information would continue to be publicly available regarding the Funds and the Shares, thereby promoting market transparency. For example, the Intraday Indicative Value (as defined in Nasdaq Rule 5735(c)(3)), available on the Nasdaq Information LLC proprietary index data service, would continue to be widely disseminated by one or more major market data vendors and broadly displayed at

least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, each Fund would continue to disclose on its website the Disclosed Portfolio (as defined in Nasdaq Rule 5735(c)(2)) that will form the basis for such Fund's calculation of net asset value ("NAV") at the end of the business day.

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 the additional flexibility to be afforded to the Adviser under the proposed rule change is intended to enhance each Fund's ability to meet its investment goals, to the benefit of investors. In addition, NAV per Share would continue to be calculated daily and each Fund's Disclosed Portfolio would continue to be made available to all market participants at the same time. Further, investors would continue to have ready access to information regarding each Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would provide the Adviser with additional flexibility in managing the Funds, thereby helping each Fund to achieve its investment goals. As such, it is expected that each Fund may become a more attractive investment product in the marketplace and, therefore, that the proposed rule

change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

Not applicable.

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

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A)<sup>16</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>17</sup> 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. For the reasons below, 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.

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

The Exchange notes that the Other Municipal Approvals did not include a representation similar to the Average Maturity Representation and the Fixed Income GLS do not impose a comparable requirement. Further, the 2019 Representations would not be affected by the proposed deletion of the Average Maturity Representation.

Based on the foregoing, the Exchange does not believe that the proposed rule change raises novel issues or that it will adversely affect investors or Exchange trading.

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 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

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

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2020-014)

March \_\_, 2020

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change relating to the First Trust California Municipal High Income ETF and the First Trust Municipal High Income ETF

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 27, 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 a rule change relating to the First Trust California Municipal High Income ETF (the “California Fund”) and the First Trust Municipal High Income ETF (the “Municipal Fund”), each a series of First Trust Exchange-Traded Fund III (the “Trust”), the shares of which have been approved by the Commission for listing and trading under Nasdaq Rule 5735 (“Managed Fund Shares”). The California Fund and the Municipal Fund are each, a “Fund” and collectively, the “Funds.” The shares of the Funds are collectively referred to herein as the “Shares.”

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

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



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.

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 Commission has approved the listing and trading of Shares under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange.<sup>3</sup> The Exchange believes the proposed rule change reflects no significant

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<sup>3</sup> The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR-NASDAQ-2008-039). The Commission previously approved the listing and trading of the Shares of each Fund. With respect to the California Fund, see Securities Exchange Act Release No. 80745 (May 23, 2017), 82 FR 24755 (May 30, 2017) (SR-NASDAQ-2017-033) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the First Trust California Municipal High Income ETF) (the "California 2017 Release"). With respect to the Municipal Fund, see Securities Exchange Act Release No. 78913 (September 23, 2016), 81 FR 69109 (October 5, 2016) (SR-NASDAQ-2016-002) (Notice of Filing of Amendment No. 3, and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 3, To List and Trade Shares of the First Trust Municipal High Income ETF of First Trust Exchange-Traded Fund III) (the "Municipal 2016

issues not previously addressed in the Prior Releases.

Each Fund is an actively-managed exchange-traded fund (“ETF”). The Shares of each Fund are offered by the Trust, which was established as a Massachusetts business trust on January 9, 2008. The Trust, which is registered with the Commission as an investment company under the Investment Company Act of 1940 (the “1940 Act”), has, with respect to each Fund, filed a post-effective amendment to its registration statement on Form N-1A (“Registration Statement”) with the Commission.<sup>4</sup> Each Fund is a series of the Trust.

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Release”). Subsequently, the Commission approved a proposed rule change relating to the Municipal Fund, the primary purpose of which was to modify certain representations included in the Municipal 2016 Release. See Securities Exchange Act Release No. 81265 (July 31, 2017), 82 FR 36460 (August 4, 2017) (SR-NASDAQ-2017-038) (Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments No. 1 and 2, Relating to the First Trust Municipal High Income ETF) (the “Municipal 2017 Release”). The Municipal 2016 Release, together with the Municipal 2017 Release, are referred to collectively as the “Municipal 2016/2017 Release.” In 2019, the Commission approved a proposed rule change relating to each Fund, the primary purpose of which was to modify certain representations included in the Municipal 2017 Release and the California 2017 Release. See Securities Exchange Act Release No. 85666 (April 16, 2019), 84 FR 16739 (April 22, 2019) (SR-NASDAQ-2019-021) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the First Trust California Municipal High Income ETF and the First Trust Municipal High Income ETF) (the “2019 Release”). The Municipal 2016/2017 Release, together with the 2019 Release, are referred to collectively as the “Municipal Prior Release.” The California 2017 Release, together with the 2019 Release, are referred to collectively as the “California Prior Release.” The California Prior Release and the Municipal Prior Release are each, a “Prior Release” and collectively, the “Prior Releases.”

<sup>4</sup> See, with respect to each Fund, Post-Effective Amendment No. 103 to Registration Statement on Form N-1A for the Trust, dated November 27, 2019 (File Nos. 333-176976 and 811-22245). The descriptions of the Funds and the Shares contained herein are based, in part, on information in the Registration Statement. First Trust Advisors L.P. (the “Adviser”) represents that the Adviser will not implement the changes described herein until the instant proposed rule change is operative.

As described in more detail below, the purpose of this proposed rule change is to delete a representation that was set forth (a) with respect to the California Fund, the California 2017 Release (and not subsequently modified in the 2019 Release) and (b) with respect to the Municipal Fund, the Municipal 2016 Release (and not subsequently modified in the Municipal 2017 Release or the 2019 Release) relating to weighted average maturity (i.e., the “Average Maturity Representation,” as defined below) in order to provide the Adviser with additional flexibility in constructing and managing the applicable Fund’s portfolio. The Exchange believes that the proposed modification would provide each Fund with greater ability to select “Municipal Securities” (as defined below) that would support such Fund’s investment goals and should not raise concerns. In this regard, the Exchange notes that the Commission has previously approved other proposed rule changes involving ETFs investing in municipal securities that did not include a representation comparable to the Average Maturity Representation.<sup>5</sup> In addition, the generic listing standards for actively-managed ETFs that invest in fixed

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<sup>5</sup> See, e.g., Securities Exchange Act Release Nos. 84381 (October 5, 2018), 83 FR 51752 (October 12, 2018) (SR-NYSEArca-2018-72) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Listing and Trading of Shares of the First Trust Ultra Short Duration Municipal ETF Under NYSE Arca Rule 8.600-E); 84379 (October 5, 2018), 83 FR 51724 (October 12, 2018) (SR-NYSEArca-2018-73) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Listing and Trading of Shares of the First Trust Short Duration Managed Municipal ETF Under NYSE Arca Rule 8.600-E); 83982 (August 29, 2018), 83 FR 45168 (September 5, 2018) (SR-NYSEArca-2018-62) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Listing and Trading of Shares of the American Century Diversified Municipal Bond ETF Under NYSE Arca Rule 8.600-E); and 71913 (April 9, 2014), 79 FR 21333 (April 15, 2014) (SR-NASDAQ-2014-019) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of the Shares of the First Trust Managed Municipal Fund of First Trust Exchange-Traded Fund III) (collectively, the “Other Municipal Approvals”).

income securities (the “Fixed Income GLS”) do not impose a requirement relating to the average maturity of securities in a portfolio.<sup>6</sup> Further, the 2019 Release includes certain representations that relate to each Fund’s diversity, liquidity and mitigation of risks associated with manipulation that would not be affected by the proposed change.<sup>7</sup>

As described in the California Prior Release,<sup>8</sup> the primary investment objective of the California Fund is to seek to provide current income that is exempt from regular federal income taxes and California income taxes, and its secondary objective is long-term capital appreciation. As described in the Municipal Prior Release,<sup>9</sup> the primary investment objective of the Municipal Fund is to generate current income that is exempt from regular federal income taxes, and its secondary objective is long-term capital appreciation. Under normal market conditions, each Fund seeks to achieve its investment objectives by investing at least 80% of its net assets (including investment borrowings) in municipal debt securities (referred to as “Municipal Securities”) that pay interest that is exempt from regular federal income taxes (and, in the case of the California Fund, California income taxes).

As discussed in the Prior Release for each Fund,<sup>10</sup> the applicable Fund may invest in Municipal Securities of any maturity. However, each Prior Release<sup>11</sup> also states that

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<sup>6</sup> See Nasdaq Rule 5735(b)(1)(B).

<sup>7</sup> See infra footnote 12 and accompanying text.

<sup>8</sup> See the California 2017 Release and the 2019 Release.

<sup>9</sup> See the Municipal 2016 Release and the 2019 Release.

<sup>10</sup> See, with respect to the California Fund, the California 2017 Release and with respect to the Municipal Fund, the Municipal 2016 Release.

under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, the weighted average maturity of the applicable Fund will be less than or equal to 14 years (the “Average Maturity Representation”). With respect to each Fund, the Average Maturity Representation has not previously been modified.

In order to provide each Fund with greater ability to select Municipal Securities that would support such Fund’s investment goals, the Exchange is proposing that, going forward, the Average Maturity Representation be deleted. The Exchange does not believe that this change should raise concerns. As noted above, the Other Municipal Approvals did not include a similar representation and the Fixed Income GLS do not impose a comparable requirement. Further, the Exchange notes that the 2019 Release includes certain representations that relate to each Fund’s diversity, liquidity and mitigation of risks associated with manipulation that would not be affected by the proposed change.<sup>12</sup>

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<sup>11</sup> See, with respect to the California Fund, the California 2017 Release and with respect to the Municipal Fund, the Municipal 2016 Release.

<sup>12</sup> As noted in the 2019 Release, under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, (a) for each Fund, no component fixed income security (excluding specified U.S. government securities) would represent more than 15% of such Fund’s net assets, and the five most heavily weighted component fixed income securities in each Fund’s portfolio (excluding U.S. government securities) would not, in the aggregate, account for more than 25% of such Fund’s net assets; (b) each Fund’s portfolio of Municipal Securities would continue to be diversified among a minimum of 30 non-affiliated issuers; (c) component securities that in the aggregate account for at least 90% of the weight of each Fund’s portfolio of Municipal Securities would continue to be exempted securities as defined in Section 3(a)(12) of the Act; and (d) each Fund’s investments in Municipal Securities would continue to provide exposure (based on dollar amount invested) to at least 10 different industries (with no more than 25% of the value of such Fund’s net assets comprised of Municipal Securities that provide exposure to any single industry). In addition, each Fund’s investments in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, would continue to be

Continued Listing Representations

For each Fund, all statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or intraday indicative values, or (d) the applicability of Exchange listing rules shall constitute continued listing requirements for listing the applicable Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by a 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 a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under the Nasdaq 5800 Series.

The Adviser represents that there would be no change to either Fund's investment objectives. Except as provided herein, with respect to each Fund, all currently effective representations (i.e., representations that have not previously been modified or superseded) made in the applicable Prior Releases (collectively, the "Prior Release Representations") would remain unchanged, including but not limited to such currently effective representations regarding (a) the description of the portfolio or reference assets,

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limited to 15% of such Fund's net assets and, subject to certain exceptions, each Fund would not invest 25% or more of the value of its total assets in securities of issuers in any one industry. Further, with respect to the Municipal Fund, under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, such Fund's investments in Municipal Securities would continue to provide exposure (based on dollar amount invested) to at least 15 different states (with no more than 30% of the value of such Fund's net assets comprised of Municipal Securities that provide exposure to any single state). The foregoing representations set forth in this footnote 12 are referred to collectively as the "2019 Representations."

(b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or intraday indicative values, or (d) the applicability of Exchange listing rules.<sup>13</sup> Except for the generic listing provisions of Nasdaq Rule 5735(b)(1) (the “generic listing standards”),<sup>14</sup> the Funds and the Shares would continue to comply with the requirements applicable to Managed Fund Shares under Nasdaq Rule 5735.

## 2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The purpose of this proposed rule change is to delete the Average Maturity Representation in order to provide the Adviser with additional flexibility in constructing and managing each Fund’s portfolio. The Exchange believes that the proposed

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<sup>13</sup> The Exchange notes, however, that certain statements in the Prior Releases include references that are no longer current and has not specifically updated such statements in this filing. For example, the Municipal 2016 Release includes references to Form N-SAR (under the heading “Availability of Information”) and a “minimum price variation” provision in Nasdaq Rule 5735(b)(3) (under the heading “Trading Rules”), neither of which is currently in effect.

<sup>14</sup> With respect to the Municipal Fund, the generic listing standards were specifically discussed in the Municipal 2017 Release and the 2019 Release. With respect to the California Fund, the generic listing standards were specifically discussed in the California 2017 Release and the 2019 Release. The Exchange notes, however, that references to Nasdaq Rule 5735(b)(1)(B)(v) in the Municipal 2017 Release and the California 2017 Release did not reflect a change to such rule that was effected in 2019. See Securities Exchange Release No. 86399 (July 17, 2019), 84 FR 35446 (July 23, 2019) (SR-NASDAQ-2019-054).

modification would provide each Fund with greater ability to select Municipal Securities that would support such Fund's investment goals. Except as provided herein, with respect to each Fund, all currently effective Prior Release Representations would remain unchanged. Except for the generic listing standards,<sup>15</sup> the Funds and the Shares would continue to comply with the requirements applicable to Managed Fund Shares under Nasdaq Rule 5735.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares would continue to be listed and traded on the Exchange pursuant to Nasdaq Rule 5735. The Exchange also notes the continued listing representations set forth above. The Exchange represents that trading in the Shares would continue to be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

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 deletion of the Average Maturity Representation is intended to provide each Fund with greater ability to select from Municipal Securities that would support such Fund's investment goals. The Exchange notes that the 2019 Representations would not be affected by the proposed modification. Additionally, the Exchange notes that the Other Municipal Approvals did not include a representation similar to the Average Maturity Representation and the Fixed Income GLS do not impose a comparable requirement.

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<sup>15</sup> See supra note 14.



In addition, a large amount of information would continue to be publicly available regarding the Funds and the Shares, thereby promoting market transparency. For example, the Intraday Indicative Value (as defined in Nasdaq Rule 5735(c)(3)), available on the Nasdaq Information LLC proprietary index data service, would continue to be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, each Fund would continue to disclose on its website the Disclosed Portfolio (as defined in Nasdaq Rule 5735(c)(2)) that will form the basis for such Fund's calculation of net asset value ("NAV") at the end of the business day.

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 the additional flexibility to be afforded to the Adviser under the proposed rule change is intended to enhance each Fund's ability to meet its investment goals, to the benefit of investors. In addition, NAV per Share would continue to be calculated daily and each Fund's Disclosed Portfolio would continue to be made available to all market participants at the same time. Further, investors would continue to have ready access to information regarding each Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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

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

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

of the Act. The Exchange believes that the proposed rule change would provide the Adviser with additional flexibility in managing the Funds, thereby helping each Fund to achieve its investment goals. As such, it is expected that each Fund may become a more attractive investment product in the marketplace and, therefore, that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 Act<sup>16</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>17</sup>

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

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>17</sup> 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.

protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2020-014 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-2020-014. 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-2020-014 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).