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SECURITIES AND EXCHANGE COMMISSION  
[Release No. 34-87191; File No. SR-NASDAQ-2019-079]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the First Trust Low Duration Opportunities ETF

October 1, 2019

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 September 17, 2019, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by 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 Low Duration Opportunities ETF (formerly known as the First Trust Low Duration Mortgage Opportunities ETF) (the “Fund”) of First Trust Exchange-Traded Fund IV (the “Trust”), the shares of which have been approved by the Commission for listing and trading under Nasdaq Rule 5735 (“Managed Fund Shares”). The shares of the Fund are collectively referred to herein as the “Shares.”

The text of the proposed rule change is available 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.

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

<sup>2</sup> 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 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 issues not previously addressed in the Prior Release.

The Fund is an actively-managed exchange-traded fund (“ETF”). The Shares are offered by the Trust, which was established as a Massachusetts business trust on September 15, 2010. The Trust, which is registered with the Commission as an investment company under the Investment Company Act of 1940 (the “1940 Act”), has filed a registration statement on Form N-1A (“Registration Statement”) relating to the Fund with the Commission.<sup>4</sup> The Fund is a

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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 the Fund. See Securities Exchange Act Release Nos. 72281 (May 30, 2014), 79 FR 32586 (June 5, 2014) (the “Prior Notice”) and 72607 (July 15, 2014), 79 FR 42386 (July 21, 2014) (the “Prior Order” and, together with the Prior Notice, the “Prior Release”) (SR-NASDAQ-2014-057).

<sup>4</sup> See Post-Effective Amendment No. 163 to Registration Statement on Form N-1A for the Trust, dated February 27, 2019 (File Nos. 333-174332 and 811-22559). The descriptions

series of the Trust. The Adviser is the investment adviser to the Fund. First Trust Portfolios L.P. is the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon ("BNY") acts as the administrator, custodian, and fund accounting and transfer agent to the Fund.

The purpose of this proposed rule change is to modify certain provisions set forth in the Prior Notice that (1) under normal market conditions, (a) require the Fund to invest at least 80% of its net assets in "Mortgage-Related Investments" and (b) limit the Fund's investments in certain debt securities, money market funds and other cash equivalents, and cash (in the aggregate) to 20% of its net assets; (2) pertain to the Fund's ability to invest in securitized products; and (3) pertain to the Fund's ability to invest in derivative instruments.

(1) Proposed Changes Pertaining to the Investment Requirement, Short-Term/Cash Investments and Non-Mortgage Government Entity Securities

The Prior Notice stated that under normal market conditions, the Fund would seek to achieve its investment objectives by investing at least 80% of its net assets (including investment borrowings) in the mortgage-related debt securities and other mortgage-related instruments described therein (collectively referred to as "Mortgage-Related Investments") (the "Investment Requirement"). Further, as indicated in the Prior Notice, the Mortgage-Related Investments in which the Fund is permitted to invest may be, but are not required to be, issued and/or guaranteed by Government Entities.<sup>5</sup> The Exchange is proposing that, going forward, (a) the Investment Requirement would be modified to require that the Fund invest at least 60% (rather

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of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement, as amended. 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.

<sup>5</sup> As stated in the Prior Notice, the U.S. government, its agencies and instrumentalities, and U.S. government-sponsored entities are referred to collectively as "Government Entities".

than at least 80%) of its net assets in Mortgage-Related Investments, and (b) the Fund would be permitted to invest up to 40% of its net assets (in the aggregate) in Short-Term/Cash Investments (as defined below) and Non-Mortgage Government Entity Securities (as defined below)<sup>6</sup> (the “40% Limit”). The Adviser believes that these modifications, by permitting the Fund to invest more conservatively, would enhance the Fund’s overall credit and liquidity profile, permit it to be more defensive in nature in times of heightened market volatility, and facilitate its ability to manage its intended low duration mandate.<sup>7</sup>

Under the heading “Other Investments”, the Prior Notice stated, among other things, that the Fund may invest up to 20% of its net assets in short-term debt securities, money market funds and other cash equivalents, or it may hold cash (the “Short-Term/Cash Provision”). In this regard, the Prior Notice stated that short-term debt securities (a) are securities from issuers having a long-term debt rating of at least A by Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. (currently known as S&P Global Ratings) (“S&P Ratings”), Moody’s Investors Service, Inc. (“Moody’s”) or Fitch Ratings (“Fitch”) and having a maturity of one year or less and (b) are defined to include, without limitation, the following: (1) fixed rate and floating rate U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by

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<sup>6</sup> As a related matter, with respect to footnote 16 of the Prior Notice and the accompanying sentence regarding the Fund’s intention to invest primarily in investment grade securities, all Short-Term/Cash Investments and Non-Mortgage Government Entity Securities would be considered investment grade securities and no Short-Term/Cash Investments or Non-Mortgage Government Entity Securities would count toward the 20% limit that applies to securities that are below investment grade and securities that are unrated and have not been judged by the Adviser to be of comparable quality to rated investment grade securities, as described in such sentence.

<sup>7</sup> In this regard, the Adviser notes that generally, in a rising interest rate environment, mortgage rates also increase, which may lead to a decrease in refinancing activity, causing certain Mortgage-Related Investments to extend in duration and average life.

U.S. government agencies or instrumentalities (collectively, “Short-Term Government Securities”); (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers’ acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements,<sup>8</sup> which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and (6) commercial paper,<sup>9</sup> which is short-term unsecured promissory notes (the short-term debt securities in which the Fund may currently invest that are listed in the preceding clauses (1) through (6) are referred to collectively as “Current Short-Term Debt Securities”). The Exchange proposes that going forward, in lieu of the Short-Term/Cash Provision, the Fund would be permitted, in accordance with the 40% Limit, to invest up to 40% of its net assets (in the aggregate) in “Short-Term/Cash Investments”, which would include only the following: (a) Current Short-Term Debt Securities and money market funds; (b) to the extent not included in (a), any cash equivalents that are included in Nasdaq Rule 5735(b)(1)(C) (“Generic Cash Equivalents”); and (c) cash.<sup>10</sup> For the avoidance of doubt, to the extent a security or other instrument in which the Fund invests meets both the definition of “Short-Term/Cash Investment” and the definition of “Mortgage-Related

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<sup>8</sup> The Prior Notice stated that the Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust.

<sup>9</sup> The Prior Notice stated that the Fund may only invest in commercial paper rated A-1 or higher by S&P Ratings, Prime-1 or higher by Moody’s, or F1 or higher by Fitch.

<sup>10</sup> To conform, the provision in the Prior Notice under the heading “Other Investments” permitting the Fund to invest “up to 20% of its net assets in the securities of other investment companies, including money market funds . . . and other ETFs” would be revised to exclude money market funds from such 20% limitation. In addition, to avoid inconsistency, the sentence in the Prior Notice under the heading “Other Investments” stating that the “use of temporary investments will not be a part of a principal investment strategy of the Fund” would be deleted.

Investment”,<sup>11</sup> such security or other instrument (a) would be taken into account for purposes of the Investment Requirement and (b) would not be taken into account for purposes of the 40% Limit.

In addition to the Short-Term/Cash Provision, under the heading “Other Investments”, the Prior Notice also stated that the Fund may, in addition to its investments in Mortgage-Related Investments issued or guaranteed by Government Entities and in Short-Term Government Securities, invest up to 20% of its net assets in other direct obligations of the U.S. government and in other securities issued or guaranteed by Government Entities.<sup>12</sup> In lieu of the foregoing 20% limit, the Exchange proposes that, going forward, the Fund would be permitted, in accordance with the 40% Limit, to invest up to 40% of its net assets in Non-Mortgage Government Entity Securities.<sup>13</sup> For the avoidance of doubt, any Mortgage-Related Investments issued and/or guaranteed by Government Entities<sup>14</sup> (a) would be taken into account for purposes of the Investment Requirement and (b) would not be taken into account for purposes of the 40% Limit.

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<sup>11</sup> Mortgage-Related Investments are not required to have maturities that are greater than or less than any specific term.

<sup>12</sup> As noted in the Prior Notice (see footnote 20 thereof and the accompanying text), such investments may include, without limitation, U.S. government inflation-indexed securities.

<sup>13</sup> For purposes of this filing, direct obligations of the U.S. government and other securities issued and/or guaranteed by Government Entities that, in each case, are neither Mortgage-Related Investments nor Short-Term/Cash Investments are collectively referred to as “Non-Mortgage Government Entity Securities”.

<sup>14</sup> These would include, without limitation, Ginnie Mae securities and Fannie Mae and Freddie Mac pass-through mortgage certificates, as referenced in footnote 10 and the accompanying text of the Prior Notice.

As described in the Prior Notice under the heading “Principal Investments”, the Fund may invest in mortgage dollar rolls<sup>15</sup> and to-be-announced transactions (“TBA Transactions”<sup>16</sup>) and, to the extent required under applicable federal securities laws, rules, and interpretations thereof, the Fund will “set aside” liquid assets or engage in other measures to “cover” open positions held in connection with such transactions. Further, as described in the Prior Notice under the heading “Other Investments”, the Fund may invest in exchange-listed U.S. Treasury futures contracts.<sup>17</sup> The Fund may invest in such contracts for various purposes, such as to obtain net long or short exposures to selected interest rates or durations or to hedge risks associated with other Fund investments. In conjunction with, and in furtherance of, the proposed changes described above, the Exchange is proposing that going forward, to the extent the Fund “sets aside”, earmarks, holds or otherwise takes measures utilizing Short-Term/Cash Investments for purposes of collateralizing or covering long positions held in connection with mortgage dollar rolls and/or TBA Transactions and/or other forward-settling Mortgage-Related Investments transactions (i.e., purchase transactions involving Mortgage-Related Investments that settle on a date that is later than the trade date/purchase date) and/or exchange-listed U.S. Treasury futures contracts, such Short-Term/Cash Investments would be counted toward the

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<sup>15</sup> As described in the Prior Notice, in a mortgage dollar roll, the Fund will sell (or buy) mortgage-backed securities for delivery on a specified date and simultaneously contract to repurchase (or sell) substantially similar (same type, coupon and maturity) securities on a future date. See footnote 13 of the Prior Notice and accompanying text.

<sup>16</sup> As described in the Prior Notice, a TBA Transaction is a method of trading mortgage-backed securities. TBA Transactions generally are conducted in accordance with widely-accepted guidelines, which establish commonly observed terms and conditions for execution, settlement and delivery. In a TBA Transaction, the buyer and the seller agree on general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date. See footnote 14 of the Prior Notice and accompanying text.

<sup>17</sup> See infra with respect to proposed changes that would expand the Fund’s ability to hold derivative instruments.

Investment Requirement rather than the 40% Limit. As such, the Fund would be able to maximize its ability to use Short-Term/Cash Investments included within the 40% Limit for other purposes (e.g., providing income and liquidity, and preserving capital for temporary or defensive purposes).

The Exchange does not believe that the proposed changes relating to the Investment Requirement, the Short-Term/Cash Provision and the Fund's ability to invest in Non-Mortgage Government Entity Securities raise concerns. Rather, the Exchange believes that such proposed changes, by expanding the Fund's ability to invest in Short-Term/Cash Investments and Non-Mortgage Government Entity Securities (and therefore, its ability to invest more conservatively), would enhance the Fund's overall credit and liquidity profile, permit it to be more defensive in nature in times of heightened market volatility, and facilitate its ability to manage its intended low duration mandate. In this regard, the Exchange notes that Short-Term/Cash Investments are generally short-term, liquid and of high credit quality,<sup>18</sup> and that Non-Mortgage Government Entity Securities are generally liquid and of high credit quality,<sup>19</sup> making them less susceptible than other asset classes both to price manipulation and volatility.

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<sup>18</sup> In addition, under Nasdaq Rule 5735(b)(1)(C)(i), there is no limitation on the percentage of a portfolio invested in cash and Generic Cash Equivalents. Investments in Short-Term/Cash Investments that are not Generic Cash Equivalents may not comply with the fixed income generic listing provisions of Nasdaq Rule 5735(b)(1)(B) (collectively, the "Fixed Income GLS"). However, the Exchange notes that the Commission has previously approved proposed rule changes to permit investments in high-quality short-term fixed income securities with maturities of up to 397 days that would not necessarily comply with the applicable requirements of the generic listing provisions for fixed income instruments of NYSE Arca, Inc. and Cboe BZX Exchange, Inc. See, e.g., Securities Exchange Act Release Nos. 86698 (August 16, 2019), 84 FR 43823 (August 22, 2019) (SR-NYSEArca-2018-83) (iShares Bloomberg Roll Select Commodity Strategy ETF); and 83014 (April 9, 2018), 83 FR 16150 (April 13, 2018) (SR-CboeBZX-2017-023) (iShares Gold Strategy ETF).

<sup>19</sup> In addition, the Exchange notes that under the Prior Order, the Fund may invest without limitation in securities issued and/or guaranteed by Government Entities (referred to

## (2) Proposed Changes to Provisions Pertaining to Investments in Securitized Products

To provide the Fund with additional flexibility in seeking exposure to the securitized product marketplace, the Exchange is proposing that, going forward, the Fund would be permitted to invest up to 5% of its net assets in asset-backed securities (other than Mortgage-Related Investments) that are not Government Securities (such asset-backed securities are referred to as “ABS”). Currently, as described in the Prior Notice, the Fund is required to limit its investments in Mortgage-Related Investments that are not Government Securities to 20% of its net assets (the “20% Non-Government Limit”). Going forward, the Exchange is proposing that the 20% Non-Government Limit would be modified to provide that the Fund may invest up to 20% of its net assets, in the aggregate, in (a) Mortgage-Related Investments that are not Government Securities and (b) ABS; however, the Fund’s investments in ABS would not exceed 5% of the Fund’s net assets.<sup>20</sup>

The Exchange does not believe that the proposed changes raise concerns given that they would not increase the percentage of the Fund’s net assets restricted by the 20% Non-

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herein as “Government Securities”) if they are also Mortgage-Related Investments. In conjunction with the proposed changes to the Investment Requirement described above, the proposed changes relating to Non-Mortgage Government Entity Securities would merely permit the Fund to invest to a greater extent in Government Securities that are not mortgage-related. In addition, the Exchange notes that Nasdaq Rule 5735(b)(1)(B)(ii), which generally requires that no component fixed income security represent more than 30% of the fixed income weight of a portfolio and that the five most heavily weighted component fixed income securities in a portfolio not in the aggregate account for more than 65% of the fixed income weight of the portfolio, includes exclusions for “Treasury Securities” and “GSE Securities” as defined in Nasdaq Rule 5735(b)(1)(B), which indicates that significant investments in such securities do not raise manipulation concerns.

<sup>20</sup> As a related matter, as a conforming change, the sentence set forth in footnote 11 of the Prior Notice would be modified to provide that (a) investments in Mortgage-Related Investments that are not Government Securities would be included for purposes of the Investment Requirement and (b) ABS are not Mortgage-Related Investments and, therefore, would not be included for purposes of the Investment Requirement.

Government Limit. Rather, a small portion of the Fund’s assets could be allocated to ABS in order to give the Fund more diversified exposure to the securitized product marketplace, thereby potentially mitigating risk and permitting the Fund to benefit from relative value opportunities within the securitized product marketplace.<sup>21</sup> Further, the Exchange notes that the Fund would comply with Nasdaq Rule 5735(b)(1)(B)(v), which permits an actively-managed ETF to invest in non-agency, non-government-sponsored entity (“non-GSE”) and privately-issued mortgage-related and other asset-backed securities (collectively, “Private ABS/MBS”), provided that such components do not account, in the aggregate, for more than 20% of the weight of the portfolio.<sup>22</sup>

### (3) Proposed Changes to Provisions Pertaining to Investments in Derivative Instruments

Under the heading “Other Investments”, the Prior Notice provided that under normal market conditions, the Fund may invest up to 20% of the value of its net assets in exchange-listed options on U.S. Treasury securities, exchange-listed options on U.S. Treasury futures contracts and exchange-listed U.S. Treasury futures contracts (the “Derivatives Provision”).<sup>23</sup> Going forward, the Exchange is proposing that to provide the Fund with

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<sup>21</sup> For the avoidance of doubt, however, the Fund could continue to invest up to 20% of its net assets in Mortgage-Related Investments that are not Government Securities so long as such investments, when aggregated with investments in ABS, do not exceed the 20% Non-Government Limit. Except as permitted by the 20% Non-Government Limit, the Fund’s investments in Mortgage-Related Investments would consist of investments in Mortgage-Related Investments that are Government Securities.

<sup>22</sup> See Securities Exchange Act Release No. 86399 (July 17, 2019), 84 FR 35446 (July 23, 2019) (SR-NASDAQ-2019-054).

<sup>23</sup> The Derivatives Provision also included footnote 18 of the Prior Notice which stated, among other things, that the Fund would limit its direct investments in futures and options on futures to the extent necessary for the Adviser to claim the exclusion from regulation as a “commodity pool operator” with respect to the Fund under Rule 4.5 promulgated by the Commodity Futures Trading Commission (“CFTC”), as such rule may be amended from time to time, and described certain related tests.

additional flexibility, the Derivatives Provision would be deleted and instead, the Fund would be permitted to hold listed and over-the-counter (“OTC”) derivatives to the extent permitted by the generic listing provisions of Nasdaq Rules 5735(b)(1)(D),<sup>24</sup> (E)<sup>25</sup> and (F)<sup>26</sup> (collectively, the

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<sup>24</sup> Under Nasdaq Rule 5735(b)(1)(D), a portfolio may hold listed derivatives, including futures, 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. There shall be no limitation to the percentage of the portfolio invested in such holdings, subject to the following requirements: (i) in the aggregate, at least 90% of the weight of such holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the Intermarket Surveillance Group (“ISG”), from other members or affiliates of ISG, or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement. (For purposes of calculating this limitation (referred to herein as the “90% Requirement”), a portfolio’s investment in listed derivatives will be calculated as the aggregate gross notional value of the listed derivatives.); and (ii) the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures). In light of the 90% Requirement, the provision set forth in footnote 17 of the Prior Notice and repeated under the heading “Surveillance” in the Prior Notice (requiring that at least 90% of the Fund’s net assets that are invested in exchange-traded equity securities and exchange-traded derivatives (in the aggregate) will be invested in investments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange) would be deleted. The Exchange notes that the only exchange-traded equity securities in which the Fund is permitted to invest are ETFs that are listed and traded in the U.S. on registered exchanges. See footnote 21 of the Prior Notice and accompanying text.

<sup>25</sup> Nasdaq Rule 5735(b)(1)(E) provides that a 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.

<sup>26</sup> Nasdaq Rule 5735(b)(1)(F) provides that to the extent that listed or OTC derivatives are used to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or indexes of fixed income securities, the aggregate gross notional value of such exposure shall meet the criteria set forth in Nasdaq Rules 5735(b)(1)(A) and 5735(b)(1)(B), respectively.

“Derivatives GLS”). The Adviser believes that expanding the listed derivatives in which the Fund may invest and permitting it to invest in OTC derivatives will help the Fund more effectively target, manage and mitigate risk.<sup>27</sup> For example, while the Fund could currently mitigate and limit exposure to the U.S. Treasury curve through investing in permitted derivatives, it could not utilize derivatives to target, manage and mitigate various other risks. The Exchange does not believe that the proposed changes to the Derivatives Provision should raise concerns since expanding the Fund’s ability to utilize derivatives is expected to enhance the Fund’s ability to target, manage and mitigate risk and would be consistent with the parameters of the Derivatives GLS. Further, as stated in the Prior Notice, the Fund’s investments in derivative instruments would be consistent with the Fund’s investment objectives and the 1940 Act and would not be used to seek to achieve a multiple or inverse multiple of an index.

#### Availability of Information

On each business day, before commencement of trading of Shares in the Regular Market Session on the Exchange, the Fund would continue to disclose on its website the Disclosed Portfolio (as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund’s calculation of net asset value (“NAV”) at the end of the business day in compliance with Nasdaq Rule 5735(c)(2). The Fund’s disclosure of derivative positions in the Disclosed Portfolio would continue to include information that market participants can use to value these positions intraday.

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<sup>27</sup> The Prior Notice indicated that the Fund’s use of derivative transactions may allow it to obtain net long or short exposures to selected interest rates or durations, and that derivatives may also be used to hedge risks associated with the Fund’s other portfolio investments. For the avoidance of doubt, the Fund’s use of derivatives is not limited to the foregoing purposes. In this regard, among other things, the Fund may use listed and OTC derivatives to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or indexes of fixed income securities in accordance with Nasdaq Rule 5735(b)(1)(F).

Intraday executable price information for the Short-Term/Cash Investments, Non-Mortgage Government Entity Securities, ABS, other fixed income securities, exchange-traded equity securities, and exchange-traded and OTC derivatives held by the Fund would be available from major broker-dealer firms and/or major market data vendors. Additionally, the Trade Reporting and Compliance Engine (“TRACE”) of the Financial Industry Regulatory Authority (“FINRA”) would continue to be a source of price information for the Mortgage-Related Investments held by the Fund. For exchange-traded assets, including listed derivatives, intraday price information would continue to be available directly from the applicable listing venues. Intraday price information for the fixed income securities held by the Fund would also continue to be generally available through subscription services which can be accessed by Authorized Participants (as defined in the Prior Notice) and other investors. Registered open-end management investment companies (other than ETFs) would continue to be generally priced once each business day and such prices would continue to be available through the applicable fund’s website or major market data vendors.

#### Surveillance

The Exchange represents that trading in the Shares would be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>28</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

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<sup>28</sup> FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

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

FINRA, on behalf of the Exchange, or the Exchange, or both, would communicate as needed, and may obtain trading information, regarding trading in the Shares and the exchange-listed instruments held by the Fund with other markets and other entities that are members of ISG.<sup>29</sup> The Exchange may also obtain information regarding trading in the Shares and the exchange-listed instruments held by the Fund from markets and other entities with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, would be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

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

#### Continued Listing Representations

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 Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will

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<sup>29</sup> For a list of the current members of ISG, see [www.isgportal.org](http://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.

advise 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.

The Adviser represents that there would be no change to the Fund's investment objectives. Except as provided herein, all representations made in the Prior Notice 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 (collectively, "Prior Notice Continued Listing Representations") would remain unchanged. Except for the Fixed Income GLS, the Fund and the Shares would comply with the requirements applicable to Managed Fund Shares under Nasdaq Rule 5735.<sup>30</sup>

## 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 the proposed rule change is to modify certain provisions included in the Prior Notice pertaining to (1) the Investment Requirement,

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<sup>30</sup> Although the Fund may not comply with the fixed income generic listing provisions of Nasdaq Rule 5735(b)(1)(B)(i)-(iv), it will comply with the fixed income generic listing provisions of Nasdaq Rule 5735(b)(1)(B)(v).

Short-Term/Cash Investments and Non-Mortgage Government Entity Securities; (2) the Fund's ability to invest in securitized products; and (3) the Fund's ability to invest in derivative instruments. Except as provided herein, the Prior Notice Continued Listing Representations would remain unchanged. Except for the Fixed Income GLS, the Fund and the Shares would 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 represents that trading in the Shares would continue to be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, or the Exchange, or both, would communicate as needed, and may obtain trading information, regarding trading in the Shares and the exchange-listed instruments held by the Fund with other markets and other entities that are members of ISG. The Exchange may also obtain information regarding trading in the Shares and the exchange-listed instruments held by the Fund from markets and other entities with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, would be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

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 Adviser represents that the primary purpose of the proposed changes is to provide it with greater flexibility in meeting the Fund's investment objectives by modifying certain provisions in the Prior Notice.

With respect to the proposed changes relating to the Investment Requirement, the Short-Term/Cash Provision and Non-Mortgage Government Entity Securities, the Exchange does not believe that such changes raise concerns. Rather, the Exchange believes that the proposed changes, by expanding the Fund's ability to invest in Short-Term/Cash Investments and Non-Mortgage Government Entity Securities (and therefore, its ability to invest more conservatively), would enhance the Fund's overall credit and liquidity profile, permit it to be more defensive in nature in times of heightened market volatility, and facilitate its ability to manage its intended low duration mandate. In this regard, the Exchange notes that Short-Term/Cash Investments are generally short-term, liquid and of high credit quality,<sup>31</sup> and that Non-Mortgage Government Entity Securities are generally liquid and of high credit quality,<sup>32</sup> making them less susceptible than other asset classes both to price manipulation and volatility.

With respect to the proposed changes to permit the Fund to invest up to 5% of its net assets in ABS, the Exchange does not believe that such changes raise concerns given that they would not increase the percentage of the Fund's net assets restricted by the 20% Non-Government Limit. Rather, a small portion of the Fund's assets could be allocated to ABS in order to give the Fund more diversified exposure to the securitized product marketplace, thereby potentially mitigating risk and permitting the Fund to benefit from relative value opportunities within the securitized product marketplace. Further, taking into account the proposed changes,

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<sup>31</sup> As stated above, the Current Short-Term Debt Securities are securities from issuers having a long-term debt rating of at least A by S&P Ratings, Moody's or Fitch and having a maturity of one year or less. The other Short-Term/Cash Investments would consist of money market funds, cash, and, to the extent not previously referenced in this footnote, Generic Cash Equivalents. See also footnote 18, supra.

<sup>32</sup> See supra footnote 19.

the 20% Non-Government Limit would be consistent with the fixed income generic listing provisions of Nasdaq Rule 5735(b)(1)(B)(v), as recently modified.<sup>33</sup>

With respect to the proposed changes relating to the Derivatives Provision, the Exchange does not believe that such changes raise concerns since expanding the Fund's ability to utilize derivatives is expected to enhance the Fund's ability to target, manage and mitigate risk and would be consistent with the parameters of the Derivatives GLS. Further, as stated in the Prior Notice, the Fund's investments in derivative instruments would be consistent with the Fund's investment objectives and the 1940 Act and would not be used to seek to achieve a multiple or inverse multiple of an index.

Based on the foregoing, the Exchange does not believe that the proposed changes would adversely affect investors or Exchange trading.

In addition, a large amount of information would continue to be publicly available regarding the Fund 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 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, the Fund would continue to disclose on its website the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Intraday executable price information for the Short-Term/Cash Investments, Non-Mortgage Government Entity Securities, ABS, other fixed income securities, exchange-traded equity securities, and exchange-traded and OTC derivatives held by the Fund would be available from major

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<sup>33</sup> See supra footnote 22.

broker-dealer firms and/or major market data vendors. Additionally, FINRA's TRACE would continue to be a source of price information for the Mortgage-Related Investments held by the Fund. For exchange-traded assets, including listed derivatives, intraday price information would continue to be available directly from the applicable listing venues. Intraday price information for fixed income securities held by the Fund would also continue to be generally available through subscription services which can be accessed by Authorized Participants and other investors. Registered open-end management investment companies (other than ETFs) would continue to be generally priced once each business day and such prices would continue to be available through the applicable fund's website or major market data vendors.

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 its ability to meet the Fund's investment objectives, to the benefit of investors. In addition, consistent with the Prior Notice, NAV per Share would continue to be calculated daily, and NAV and the 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 the 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, thereby helping the Fund to achieve its investment objectives. As such, it is expected that the 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>34</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>35</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 protection of investors, or otherwise in furtherance of the purposes of the Act.

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<sup>34</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>35</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.

#### 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-2019-079 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-2019-079. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without

change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2019-079 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>36</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>36</sup> 17 CFR 200.30-3(a)(12).

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