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SECURITIES AND EXCHANGE COMMISSION  
[Release No. 34-88666; File No. SR-NASDAQ-2020-020]

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

April 16, 2020.

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 April 15, 2020, 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, II, and III below, which Items have been principally 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 to a rule change relating to the First Trust Tactical High Yield ETF (formerly known as the First Trust High Yield Long/Short ETF) (the “Fund”) of First Trust Exchange-Traded Fund IV (the “Trust”), 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.

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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. 68581 (January 4, 2013), 78 FR 2295 (January 10, 2013) (“2013 Notice”) and 68972 (February 22, 2013), 78 FR 13721 (February 28, 2013) (“2013 Order” and, together with the 2013 Notice, the “2013 Release”) (SR-NASDAQ-2012-147). Subsequently, the Commission approved a proposed rule change relating to the Fund in order to modify the description of the measures First Trust Advisors L.P. (the “Adviser”) would use to implement the Fund’s investment objectives and to modify certain representations included in the 2013 Release. See Securities Exchange Act Release Nos. 71473 (February 4, 2014), 79 FR 7728 (February 10, 2014) (“2014 Notice”) and 72141 (May 9, 2014), 79 FR 27944 (May 15, 2014) (“2014 Notice and Order” and, together with the 2014 Notice, the “2014 Release”) (SR-NASDAQ-2014-009). The 2013 Release, together with the 2014 Release, are referred to collectively as the “Prior Release”.

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 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 acts as the administrator, custodian, and fund accounting and transfer agent to the Fund.

The purpose of this proposed rule change is (1) to expand the Fund’s ability to hold certain fixed income, equity and equity-like securities, positions and interests, and (2) to expand the Fund’s ability to invest in derivatives.

**(1) Proposed Changes to Expand the Fund’s Ability to Hold Certain Fixed Income, Equity and Equity-Like Securities, Positions and Interests**

As described in the 2013 Order, under normal market conditions, the Fund invests at least 80% of its net assets (plus the amount of any borrowing for investment purposes) in high-yield debt securities that are rated below investment grade at the time of purchase, commonly referred to as “junk” bonds, or unrated securities deemed by the Adviser to be of comparable quality (collectively referred to as “Primary Investments”) (the “80% Requirement”).<sup>5</sup> In addition to Primary Investments, the Fund may invest up 20% of its net assets (in the aggregate) in certain other permitted investments as described in the Prior Release (“Non-Primary Investments”).

Going forward, the Exchange is proposing that the Fund’s ability to hold certain fixed income,

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<sup>4</sup> See Post-Effective Amendment No. 170 to Registration Statement on Form N-1A for the Trust, dated February 28, 2020 (File Nos. 333-174332 and 811-22559). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement, as amended. The Adviser represents that it will not implement the changes described herein until the instant proposed rule change is operative.

<sup>5</sup> See infra under the heading “(2) Proposed Changes to Expand the Fund’s Ability to Invest in Derivatives” regarding the 80% Requirement in relation to proposed changes to the Fund’s ability to invest in derivatives.

equity and equity-like securities, positions and interests be expanded as described below.

Under the heading “Other Investments,” the 2013 Order stated that the Fund may receive equity, warrants, corporate bonds, and “other such securities” (i.e., equity and fixed income securities; and “equity, warrants, corporate bonds, and other such securities” are, collectively, “Received Instruments”<sup>6</sup>) as a result of the restructuring of the debt of an issuer, or a reorganization of a bank loan or bond, or as part of a package of securities acquired together with a high-yield bond or senior loan(s) of an issuer. Further, the 2013 Order stated that such investments (i.e., the Received Instruments) would be subject to the Fund’s investment objectives, restrictions and strategies, as described therein. The Adviser believes that under certain circumstances, a limited ability to retain Received Instruments beyond the parameters set forth in the 2013 Order may serve to benefit shareholders to the extent it helps the Fund to pursue its investment objectives by retaining an investment interest, which the Adviser believes has merit, relating to a particular issuer.<sup>7</sup> However, the Adviser’s overall approach to managing the Fund (which, as described in the 2013 Order, incorporates a combination of thorough and continuous credit risk analysis, market evaluation, diversification, and the ability to reallocate investments) would not change.

To provide the Fund with additional flexibility with respect to its ability to retain Received Instruments, going forward, the Exchange is proposing that certain restrictions set forth

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<sup>6</sup> For the avoidance of doubt, “Equity-Based Received Instruments” (as defined below) are included within the meaning of the term “Received Instruments.”

<sup>7</sup> For example, a situation may arise where in lieu of a bond, loan, or other debt instrument that the Adviser originally selected, the Fund would be presented with new equity of or relating to the applicable issuer, but, in light of certain restrictions and representations in the 2013 Order, would be precluded from retaining the instrument and would therefore be required to dispose of the instrument despite its perceived benefit to shareholders of the Fund, in order to maintain compliance with the continued listing standards of the Exchange.

in the 2013 Order be modified, as described below.<sup>8</sup> The Exchange believes that concerns related to manipulation should be mitigated given that the proposed changes (a) would be limited in scope, and (b) would be subject to the limits described below. In this regard, the Exchange notes the Adviser’s expectation that generally, over time, significantly less than 20% of the Fund’s net assets would be comprised of Equity-Based Received Instruments (as defined below) (which means that significantly less than 20% of the Fund’s net assets are expected to be comprised of instruments that do not satisfy the “ISG Restriction” (as defined below)).

Going forward, the Exchange is proposing that the definition of Received Instruments be modified to allow the Fund to receive equity, warrants, corporate bonds, and other such securities received (a) in conjunction with the restructuring or reorganization, as applicable, of an issuer or any debt issued by an issuer, whether accomplished within or outside of a bankruptcy proceeding under 11 U.S.C. 101 et seq. (or any other similar statutory restructuring or reorganization proceeding) or (b) together with (*i.e.*, as part of a unit or package that includes) one or more Primary Investments (or other debt instruments) of an issuer.<sup>9</sup> The Fund’s ability to retain Received Instruments would be subject to the Fund’s investment objectives, restrictions and strategies, as described in the Prior Release, subject to the modifications set forth in this filing. The Fund’s aggregate holdings in Equity-Based Received Instruments (as defined below)

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<sup>8</sup> The Exchange notes that the Commission has previously approved a similar proposal with respect to another ETF for which the Adviser serves as investment adviser. See Securities Exchange Act Release No. 84425 (October 15, 2018), 83 FR 53124 (October 19, 2018) (SR-NASDAQ-2018-050) (relating to the First Trust Senior Loan Fund) (the “Senior Loan Fund Approval”).

<sup>9</sup> For example, incidental to the Fund’s purchase of a Primary Investment, the Fund may from time to time receive warrants and/or other equity securities as part of a unit or package combining a Primary Investment and such warrants and/or other equity securities.

would continue to not qualify as Primary Investments and, accordingly, together with other Non-Primary Investments, would be limited to 20% of the Fund’s net assets.

The 2013 Order stated that the equity securities in which the Fund may invest (including any that have converted from convertible debt) would be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (“ISG”), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange (the “ISG Restriction”). In light of the many types of interests that may be received and variations in nomenclature, the Exchange is proposing that, going forward, the Fund may retain, without regard to the ISG Restriction, equity and equity-like securities, positions and interests that would be Received Instruments (“Equity-Based Received Instruments”).<sup>10</sup> For the avoidance of doubt, for purposes of this filing, such Equity-Based Received Instruments shall mean any one or more of the following (whether received individually or as part of a unit or package of securities and/or other instruments): (i) common and preferred equity interests in corporations; (ii) membership interests (e.g., in limited liability companies), partnership interests, and interests in other types of entities (e.g., state law business trusts and real estate investment companies); (iii) warrants; (iv) Tax Receivable Agreement (TRA) rights; (v) claims (generally, rights to payment, which can come in various forms, including without limitation claims units and claims trusts); (vi) trust certificates representing an interest in a trust established under a confirmed plan of reorganization; (vii) interests in liquidating, avoidance or other types of trusts; (viii) interests in joint ventures; and

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<sup>10</sup> For the avoidance of doubt, the Fund may also hold U.S. and non-U.S. Received Instruments that are not Equity-Based Received Instruments. Further, Received Instruments may include both Primary Investments and Non-Primary Investments but, as mentioned above, Equity-Based Received Instruments would not qualify as Primary Investments and, together with other Non-Primary Investments, would be limited to 20% of the Fund’s net assets.

(ix) rights to acquire any of the Equity-Based Received Instruments described in clauses (i) through (viii).<sup>11</sup>

Except as described in this filing, the Fund’s ability to retain Received Instruments would continue to be subject to the Fund’s investment objectives, restrictions and strategies, as described in the Prior Release. As indicated above, the Fund would not hold more than 20% of its net assets in Equity-Based Received Instruments (among other Non-Primary Investments).<sup>12</sup>

**(2) Proposed Changes to Expand the Fund’s Ability to Invest in Derivatives**

The 2013 Order included a representation that the Fund would not invest in options contracts, futures contracts or swap agreements. However, the 2014 Notice and Order deleted this representation and provided that under normal market conditions, the Fund would be permitted to invest up to 30% of the value of its net assets in U.S. exchange-traded options on futures contracts and U.S. exchange-traded futures contracts (the “Derivatives Provision”).<sup>13</sup>

Going forward, the Exchange is proposing that to provide the Fund with additional flexibility,

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<sup>11</sup> The Fund may be entitled to acquire additional Equity-Based Received Instruments by exercising warrants (included in clause (iii)) and/or rights (included in clause (ix)). For the avoidance of doubt, the Fund’s ability to retain Equity-Based Received Instruments that it acquires by exercising such warrants and/or rights will be the same as its ability to retain Equity-Based Received Instruments that it otherwise receives. In addition, for the avoidance of doubt, Received Instruments may include convertible securities and Equity-Based Received Instruments may include positions and interests resulting from the conversion of convertible securities.

<sup>12</sup> In this regard, however, the Adviser expects that, generally, over time, significantly less than 20% of the Fund’s net assets would be comprised of Equity-Based Received Instruments. In addition, for the avoidance of doubt, Equity-Based Received Instruments would not be taken into account for purposes of compliance with the 80% Requirement.

<sup>13</sup> The Derivatives Provision also included footnote 15 of the 2014 Notice and Order 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.

the Derivatives Provision would be deleted and, instead, the Fund would be permitted to invest in listed and over-the-counter (“OTC”) derivatives (collectively, “Derivative Instruments”) to the extent permitted by the generic listing provisions of Nasdaq Rules 5735(b)(1)(D),<sup>14</sup> (E)<sup>15</sup> and (F)<sup>16</sup> (collectively, the “Derivatives GLS”). The Adviser believes that expanding the listed derivatives in which the Fund may invest and permitting it to invest in OTC derivatives may

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<sup>14</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 ISG, from other members or affiliates of the 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 the 2014 Notice and Order requiring that at least 90% of the Fund’s net assets that are invested in the derivative instruments specified therein would be invested in derivative instruments that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange would be deleted.

<sup>15</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>16</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.

enhance the Fund’s ability to utilize derivatives for the purposes set forth in the 2014 Notice and Order.<sup>17</sup> Further, for purposes of complying with the 80% Requirement, in addition to investing directly in Primary Investments, going forward, the Fund would be permitted to invest in Derivative Instruments with economic characteristics that are comparable to those of Primary Investments.<sup>18</sup>

The Exchange does not believe that the proposed changes regarding the Fund’s ability to invest in derivatives should raise concerns given that, going forward, the Fund would invest in Derivative Instruments in accordance with the parameters of the Derivatives GLS. In addition, certain related representations included in the 2014 Notice and Order would continue to apply.<sup>19</sup>

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<sup>17</sup> In this regard, the 2014 Notice and Order indicated that the use of the derivative instruments specified therein may allow the Fund to seek to enhance return, to hedge some of the risks of its investments in securities, to substitute derivatives for a position in an underlying asset, to reduce transaction costs, to maintain full market exposure (which means to adjust the characteristics of its investments to more closely approximate those of the markets in which it invests), to manage cash flows, to preserve capital, or to manage its foreign currency exposures. For the avoidance of doubt, the Fund’s use of derivatives would not be limited to the foregoing purposes.

<sup>18</sup> As indicated above, the Fund would comply with the Derivatives GLS.

<sup>19</sup> First, although the Fund’s investments in Derivative Instruments could potentially be used to enhance leverage, the Fund’s investments in Derivative Instruments would be consistent with the Fund’s investment objectives and would not be used to seek to achieve a multiple or inverse multiple of an index. Second, investments in Derivative Instruments would be made in accordance with the 1940 Act and consistent with the Fund’s investment objectives and policies. Third, the Fund would continue to comply with the regulatory requirements of the Commission to maintain assets as “cover,” maintain segregated accounts, and/or make margin payments when it takes positions in Derivative Instruments involving obligations to third parties (*i.e.*, instruments other than purchase options). If the applicable guidelines prescribed under the 1940 Act so require, the Fund would continue to earmark or set aside cash, U.S. government securities, high-grade liquid debt securities, and/or other liquid assets in a segregated custodial account in the amount prescribed. Fourth, the Fund would continue to include appropriate risk disclosure in its offering documents, including leveraging risk. As indicated in footnote 17 of the 2014 Notice and Order, to mitigate leveraging risk, the Fund would continue to segregate or “earmark” liquid assets or otherwise cover the transactions that may give rise to such risk.

The 2014 Notice and Order indicated that the derivative instruments specified therein would typically be valued at the closing price in the market where such instruments are principally traded. Going forward, exchange-listed Derivative Instruments would typically be valued at the closing price in the market where such instruments are principally traded and OTC Derivative Instruments would typically be valued using information provided by independent pricing services.

#### Availability of Information

The Fund’s Disclosed Portfolio, as defined in Nasdaq Rule 5735(c)(2), would include the Received Instruments and Derivative Instruments held by the Fund. Intra-day executable price quotations for the Received Instruments held by the Fund would be available from major broker-dealer firms and/or market data vendors (and/or, if applicable, on the exchanges on which they are traded). Intra-day price information for the Received Instruments would be available through subscription services, such as Markit, Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors, and/or from independent pricing services. Pricing information for Derivative Instruments would be available from major broker-dealer firms and/or through subscription services and, if applicable, from the exchanges on which they are traded. Further, for the Fund, an estimated value, defined in Nasdaq Rule 5735(c)(3) as the “Intraday Indicative Value” that reflects an estimated intraday value of the Fund’s portfolio, including, among other things, Received Instruments and Derivative Instruments, would continue to be disseminated.<sup>20</sup>

#### Surveillance

The Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, or

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<sup>20</sup> With respect to the Fund’s other permitted investments, statements regarding availability of pricing information included in the Prior Release would continue to apply.

the Exchange, or both, would communicate as needed, and may obtain trading information, regarding trading in the exchange-listed Equity-Based Received Instruments (if any) and exchange-listed Derivative Instruments held by the Fund with other markets and other entities that are members of ISG.<sup>21</sup> The Exchange may also obtain information regarding trading such 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, with respect to Received Instruments that are fixed income securities, FINRA, on behalf of the Exchange, would be able to access, as needed, trade information for such securities held by the Fund to the extent reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").<sup>22</sup>

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 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

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<sup>21</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.

<sup>22</sup> With respect to trading information relating to the Fund's other permitted investments, statements regarding surveillance included in the Prior Release would continue to apply.

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 Release 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 Release Continued Listing Representations") would remain unchanged.<sup>23</sup> Except for the generic listing provisions of Nasdaq Rule 5735(b)(1) (the "generic listing standards")<sup>24</sup> and as otherwise provided in this filing, the Fund and the Shares would 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

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<sup>23</sup> Certain provisions of the Prior Release, however, were based on information as of a particular date and there has not been an undertaking to update such information for purposes of this filing. In addition, the Exchange notes that the current name of the Fund's benchmark (defined in the 2013 Order as the "Index") is ICE BofA US High Yield Constrained Index.

<sup>24</sup> In particular, the Fund may not meet the criteria of Nasdaq Rule 5735(b)(1)(B). Additionally, the Fund's investments in equity securities are not generally expected to meet the criteria set forth in Nasdaq Rule 5735(b)(1)(A) and, to the extent the Fund invests in cash equivalents, such investments may not necessarily satisfy the criteria set forth in Nasdaq Rule 5735(b)(1)(C) (for example, the requirement that maturities be less than three months). As described in this filing, the Fund's investments in Derivative Instruments would meet the criteria set forth in the Derivatives GLS. For the avoidance of doubt, Equity-Based Received Instruments (including without limitation warrants and rights referenced above in footnote 11 and the accompanying text) will not be considered to be options or any other type of derivative.

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 purposes of the proposed rule change are (1) to expand the Fund’s ability to hold certain fixed income, equity and equity-like securities, positions and interests, and (2) to expand the Fund’s ability to invest in derivatives. Except as provided herein, the Prior Release Continued Listing Representations would remain unchanged. Except for the generic listing standards and as otherwise provided in this filing, 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. FINRA, on behalf of the Exchange, or the Exchange, or both, would communicate as needed, and may obtain trading information, regarding trading in the exchange-listed Equity-Based Received Instruments (if any) and exchange-listed Derivative 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 such 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, with respect to Received Instruments that are fixed income securities, FINRA, on behalf of the Exchange, would be able to access, as needed, trade information for such securities held by the Fund to the extent reported to FINRA’s TRACE. Further, the Exchange notes that although the proposed changes in this filing would permit the Fund to retain, without regard to the ISG Restriction, Equity-Based Received Instruments, the Fund would not hold more than 20% of its net assets in Equity-Based Received Instruments (which would not be taken into account for purposes of

compliance with the 80% Requirement), and the Adviser expects that generally, over time, significantly less than 20% of the Fund’s net assets would be comprised of Equity-Based Received Instruments.

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 Release. Notwithstanding the proposed changes, however, the Adviser’s overall approach to managing the Fund (which, as described in the 2013 Order, incorporates a combination of thorough and continuous credit risk analysis, market evaluation, diversification, and the ability to reallocate investments) would not change. Additionally, the Fund would continue to invest 85% or more of its portfolio in securities that the Adviser deems to be sufficiently liquid at the time of investment in accordance with Commission guidance and, in addition, the Adviser would continue to monitor portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained.

With respect to the proposed changes relating to Received Instruments, the Adviser believes that under certain circumstances, a limited ability to retain Received Instruments beyond the parameters set forth in the 2013 Order may serve to benefit shareholders to the extent it helps the Fund to pursue its investment objectives by retaining an investment interest, which the Adviser believes has merit, relating to a particular issuer. The Exchange believes that concerns related to manipulation should be mitigated given that the proposed changes (a) would be limited in scope, and (b) would be subject to the limits described above. As indicated above, the Fund’s aggregate holdings in Equity-Based Received Instruments would continue to not qualify as

Primary Investments and, accordingly, together with other Non-Primary Investments, would be limited to 20% of the Fund’s net assets. Additionally, the Exchange notes the Adviser’s expectation that generally, over time, significantly less than 20% of the Fund’s net assets would be comprised of Equity-Based Received Instruments (which means that significantly less than 20% of the Fund’s net assets are expected to be comprised of instruments that do not satisfy the ISG Restriction). Further, Equity-Based Received Instruments would not be taken into account for purposes of compliance with the 80% Requirement. Based on the foregoing, the Exchange does not believe that the proposed changes will adversely affect investors or Exchange trading.

With respect to the proposed changes relating to the Fund’s ability to invest in derivative instruments, the Exchange does not believe that the proposed changes raise concerns under Section 6(b) of the Act given that, going forward, the Fund would invest in Derivative Instruments in accordance with the parameters of the Derivatives GLS.

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, 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 the applicable website<sup>25</sup> the Disclosed Portfolio that will form the basis for the Fund’s calculation of net asset value (“NAV”) at the end of the business day. In addition, the Fund’s Disclosed Portfolio would include the Received Instruments and Derivative Instruments held by the Fund. Intra-day executable price quotations for the Received Instruments held by the

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<sup>25</sup> [www.ftportfolios.com](http://www.ftportfolios.com).

Fund would be available from major broker-dealer firms and/or market data vendors (and/or, if applicable, on the exchanges on which they are traded). Intra-day price information for the Received Instruments would be available through subscription services, such as Markit, Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors, and/or from independent pricing services. Pricing information for Derivative Instruments would be available from major broker-dealer firms and/or through subscription services and, if applicable, from the exchanges on which they are traded.

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 Release, 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, as noted above and/or in the Prior Release, 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) of the Act<sup>26</sup> and Rule 19b-4(f)(6) thereunder.<sup>27</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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change 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

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<sup>26</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>27</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

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-2020-020 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-2020-020. 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-2020-020 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>28</sup>

J. Matthew DeLesDernier,  
Assistant Secretary.

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<sup>28</sup> 17 CFR 200.30-3(a)(12).

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