NUCLEAR REGULATORY
COMMISSION

[Docket Nos. 50–445 and 50–446; NRC–2012–0310]

Consideration of Approval of Application Containing Sensitive Unclassified Non-Safeguards Information Regarding Proposed Energy Future Holdings Corporation Internal Restructuring

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for indirect license transfer; opportunity for hearing, to petition for leave to intervene, and to comment; order; correction.

SUMMARY: This document corrects a notice appearing in the Federal Register on January 2, 2013 (78 FR 119). This action is necessary to correct an incorrect Docket ID.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–492–3667; email: Cindy.Bladey@nrc.gov.

SUPPLEMENTARY INFORMATION: On page 119 of Federal Register document 2012–31527, published January 2, 2013 (78 FR 119–123), the heading is corrected to read “NRC–2012–0310.” Also on the same page, second column, in the first paragraph under the ADDRESSES section and in the first bullet under the ADDRESSES section, “NRC–2012–0301” is corrected to read “NRC–2012–0310.” Also on the same page, third column, in the first paragraph under the “Accessing Information” section and in the first bullet under the “Accessing Information” section, “NRC–2012–0301” is corrected to read “NRC–2012–0310.” Also on the same page, third column, in the first paragraph under the “Submitting Comments” section, “NRC–2012–0301” is corrected to read “NRC–2012–0310.”

Dated at Rockville, Maryland, this 4th day of January 2013.

For the Nuclear Regulatory Commission.

Helen Chang,
Acting Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

BILLING CODE 7590–01–P

NUCLEAR REGULATORY
COMMISSION

[Docket No. 55–23694–SP; ASLBNo. 13–925–01–SP–BD01]

Charlissa C. Smith: Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission, see 37 FR 28,710 (Dec. 29, 1972), and the Commission’s regulations, see 10 CFR §§ 2.103(b), 2.300, 2.309, 2.313(a), 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Charlissa C. Smith, (Denial of Senior Reactor Operator License).

This proceeding concerns a hearing request from Charlissa C. Smith, dated December 5, 2012, challenging a denial letter from the Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission (NRC) dated November 15, 2012 notifying her that, following an administrative review, the NRC is in agreement with Region II’s decision of May 11, 2012 not to issue her a Senior Reactor Operator License for the Vogtle Power Station.

The Board is comprised of the following administrative judges:


As provided in 10 CFR 2.302, all correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 4th day of January 2013.

E. Roy Hawkens,
Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2013–00328 Filed 1–9–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE
COMMISSION


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

January 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),1 and Rule 19b–4 thereunder,2 notice is hereby given that on December 21, 2012, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

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

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

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund will be an actively managed exchange traded fund (“ETF”). The Shares will be offered by the Adviser, which was established as a Massachusetts business trust on September 15, 2010. The Fund is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (“Registration Statement”) with the Commission.4

Description of the Shares and the Fund

First Trust Advisors L.P. is the investment adviser (“Adviser”) to the Fund. First Trust Portfolios L.P. (the “Distributor”) is the principal underwriter and distributor of the Fund’s Shares. The Bank of New York Mellon Corporation (“BNY”) will act as the administrator, accounting agent, custodian and transfer agent to the Fund.5

Paragraph (g) of Rule 5735 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.6 In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund’s portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is affiliated with the Distributor, a broker-dealer. The Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund does not currently intend to use a sub-advisor.

First Trust High Yield Long/Short ETF

According to the Registration Statement, the Fund’s primary investment objective is to provide current income. The Fund has a secondary objective of capital appreciation. The Fund will pursue its objective by seeking to invest in a broadly diversified portfolio comprised principally of high yield debt securities.

The Adviser will combine a fundamental credit selection process with top down relative value analysis when selecting investment opportunities. The Adviser believes that an evolving investment environment offers varying degrees of investment risk opportunities in the high yield, bank loan, and fixed income instrument markets. In order to capitalize on investments and effectively manage potential risk, the Adviser believes that the combination of thorough and continuous credit risk analysis, market evaluation, diversification and the ability to reallocate investments is critical to achieving higher risk-adjusted returns.

Investments

According to the Registration Statement, the Fund, under normal market conditions, will invest 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 or unrated securities deemed by the Adviser to be of comparable quality, commonly referred to as “junk” bonds. Such securities may include U.S. and


5 See Post-Effective Amendment No. 6 to Registration Statement on Form N–1A for the Trust, dated October 11, 2012 (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.

6 The Commission has issued an order granting certain expedited relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (“1940 Act”). See Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–435). In compliance with Nasdaq Rule 5735(b)(5), which applies to Managed Fund Shares based on a fixed income portfolio (including without limitation exchange-traded notes and senior loans) or a portfolio invested in a combination of equity securities and fixed income securities, the Trust’s application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requirements are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

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

7 The term “under normal conditions” as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.
corporations primarily to finance acquisitions, refinance existing debt, support organic growth, or pay out dividends, and are typically originated by large banks and are then syndicated out to institutional investors as well as to other banks. Bank loans typically bear interest at a floating rate although some loans pay a fixed rate. Due to their subordination in the borrower’s capital structure, unsecured and/or subordinated loans involve a higher degree of overall risk than senior bank loans of the same borrower. Unfunded contracts are commitments by bank lenders (such as the funds) to loan an amount in the future or that is due to be contractually funded in the future. The Fund will invest 85% or more of the portfolio in securities that the Adviser deems to be sufficiently liquid at the time of investment.

The Fund may invest in non-income producing securities including defaulted securities and common stocks; companies whose financial condition is troubled or uncertain and that may not have the capacity to pay dividends or interest and repay principal in accordance with the terms of the obligation. Many below-investment grade debt securities are subject to legal or contractual restrictions limiting the Fund’s ability to resell the securities to the general public.

According to the Registration Statement, the Fund may invest in corporate debt securities issued by U.S. and non-U.S. companies of all kinds, including those with small, mid and large capitalizations. Notes, bonds, debentures and commercial paper are the most common types of corporate debt securities, with the primary difference being their maturities and secured or unsecured status. Corporate debt may carry fixed or floating rates of interest.

The Fund may invest up to 15% of its net assets in bank loans, which may also include loan interests that are not secured by any specific collateral of the borrower, loan interests that have a lower than first lien priority on collateral of the borrower, loans to foreign borrowers, loans in foreign currencies and other loans with characteristics that the Adviser believes qualify as bank loans. The Fund may invest in such loans by purchasing assignments or all or a portion of loans or loan participations from third parties. These loans are made by or issued to non-U.S. corporate debt obligations, bank loans and convertible bonds. For purposes of determining whether a security is below investment-grade, the lowest available rating will be considered. At least 75% of the Fund’s net assets invested in high yield debt securities will be invested in issuers that have a minimum principal amount outstanding of $100 million or more with respect to U.S. corporate issuers and $200 million or more with respect to non-U.S. corporate issuers, and the portfolio, once fully invested, will include a minimum of 13 non-affiliated issuers.

High yield debt may be issued by companies without long track records of sales and earnings, or by issuers that have questionable credit strength. High yield debt and comparable unrated debt securities: (a) Will likely have some quality and protective characteristics that, in the judgment of the rating agency evaluating the instrument, are outweighed by large uncertainties or major risk exposures to adverse conditions; and (b) are predominantly speculative with respect to the issuer’s capacity to pay dividends or interest and repay principal in accordance with the terms of the obligation. Many below-investment grade debt securities are subject to legal or contractual restrictions limiting the Fund’s ability to resell the securities to the general public.

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the Fund sells a security that it does not own (and borrows the security to deliver it to the buyer) in anticipation that the market price of the security will decline. The proceeds received from the Fund’s short sales of securities will generally be used to purchase all or a portion of the Fund’s additional long positions in securities.

The Fund will use short sales for investment and risk management purposes, including when the Adviser anticipates that the market price of securities will decline or in the aggregate will underperform the Index. Short sales are transactions in which the Fund sells a security or other instrument (such as an option, forward, futures or other derivative contract) that it does not own. Short selling allows the Fund to profit from a decline in market price to the extent such decline exceeds the transaction costs and the costs of borrowing the securities. In times of unusual or adverse market, economic, regulatory or political conditions, the Fund may not be able, fully or partially, to implement its short selling strategy. If a security sold short increases in price, the Fund may have to purchase the security at a higher price than the short sale price, resulting in a loss. The Fund will have substantial short positions and must borrow those securities to deliver to the buyer.

Other Investments

The Fund may invest in U.S. government securities. U.S. government securities include U.S. Treasury obligations and securities issued or guaranteed by various agencies of the U.S. government, or by various instrumentalities which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the “full faith and credit” of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.


Under normal market conditions, the Fund may invest up to 10% of its net assets in short-term debt securities and other cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings varies and depends on several factors, including market conditions. For temporary defensive purposes and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies and invest part or all of its assets in short-term debt securities or cash equivalents or it may hold cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the portfolio managers believe securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

Short-term debt securities are securities from issuers having a long-term debt rating of at least A by Standard & Poor’s Ratings Group (“S&P Ratings”), Moody’s Investors Service, Inc. (“Moody’s”) or Fitch, Inc. (“Fitch”) and having a maturity of one year or less. The use of temporary investments is not a part of a principal investment strategy of the Fund.

Short-term debt securities are defined to include, without limitation, the following: (1) 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 U.S. Government agencies or instrumentalities; (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, 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, which is short-term unsecured promissory notes, including variable rate master demand notes issued by corporations to finance their current operations. The Fund may only invest in commercial paper rated A–2 or higher by S&P Ratings, Prime-2 or higher by Moody’s or F2 or higher by Fitch.

The Fund intends to hedge its non-U.S. dollar holdings. Generally, the Fund’s currency exchange transactions will be conducted on a spot (i.e., cash) basis at the spot rate prevailing in the currency exchange market. The cost of the Fund’s currency exchange transactions will generally be the difference between the bid and offer spot rate of the currency being purchased or sold. In order to protect against uncertainty in the level of future currency exchange rates, the Fund is authorized to enter into various currency exchange transactions.

The Fund may invest up to 10% of its net assets in securities of other open-end or closed-end investment companies, including ETFs that invest primarily in securities of the types in which the Fund may invest directly. In addition, the Fund may invest a portion of its assets in pooled investment vehicles (other than investment companies) that invest primarily in securities of the types in which the Fund may invest directly. According to the Registration Statement, the Fund may invest in other investment companies to the extent permitted by the 1940 Act.

The Fund may receive equity, warrants, corporate bonds and other such securities as a result of the restructurings 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. Such investments will be subject to the Fund’s investment objectives and strategies as described above.

The Fund intends to qualify each year as a regulated investment company (“RIC”) under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including variable rate master demand notes and 144A securities from issues with less than $100 million original principal amount outstanding. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of

11 According to the Registration Statement, 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. The Adviser will review and monitor the creditworthiness of such institutions. The Adviser monitors the value of the collateral at the time the action is entered into and at all times during the term of the repurchase agreement.

12 As described in the Registration Statement, an ETF is an investment company registered under the 1940 Act that holds a portfolio of securities generally designed to track the performance of a securities index, including industry, sector, country and region indexes. Such ETFs all will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by such ETFs and their sponsors from the Commission. The ETFs in which the Fund may invest include Index Fund Shares and Portfolio Depositary Receipts (as described in NASDAQ Rule 5705); Managed Fund Shares (as described in NASDAQ Rule 5735); and closed-end funds. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (e.g., 2X or 3X) ETFs.
liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund’s net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance. The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or securities of other investment companies.13

The Fund may not, as to 75% of its total assets, (a) invest more than 5% of the value of its total assets in the securities of any one issuer or (b) hold more than 10% of the outstanding voting securities of that issuer (other than securities of other investment companies and obligations issued or guaranteed by the U.S. government or any agency or instrumentality thereof).14

Consistent with the exceptive order referenced in footnote 5, the Fund will not invest in options contracts, futures contracts or swap agreements. The Fund’s investments will be consistent with the investment objective and strategies described in the Registration Statement. The Fund will not invest to enhance leverage.

The Shares

The Fund will issue and redeem Shares on a continuous basis at net asset value (“NAV”)15 only in large blocks of Shares (“Creation Units”) in transactions with Authorized Participants. Creation Units generally will consist of 50,000 Shares, though this may change from time to time. Creation Units are not expected to consist of less than 50,000 Shares. The Fund will issue and redeem Creation Units in exchange for a portfolio of high yield debt securities and other instruments closely approximating the holdings of the Fund or a designated basket of non-U.S. currency and/or an amount of U.S. cash. Once created, Shares of the Fund trade on the secondary market in amounts less than a Creation Unit.

Creation and redemptions must be made by an Authorized Participant or through a firm that is either a member of the National Securities Clearing Corporation or a Depository Trust Company participant, and in each case, must have executed an agreement with the Distributor with respect to creations and redemptions of Creation Unit aggregations.

Additional information regarding the Shares and the Fund, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement.

Availability of Information

The Fund’s Web site (www.ftportfolios.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day’s reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the “Bid/Ask Price”),16 and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session17 on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the “Disclosed Portfolio”) held by the Fund that will form the basis for the Fund’s calculation of NAV at the end of the business day.18 The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting and market value of fixed income securities, and other assets held by the Fund and the characteristics of such assets. The Web site and information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735 as the “Intraday Indicative Value,” that reflects an estimated intraday value of the Fund’s portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,19 will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session. In addition, during hours when the markets for local debt in the Fund’s portfolio are closed, the Intraday Indicative Value will be updated at least every 15 seconds during the Regular Market Session to reflect currency exchange fluctuations.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day. Intra-day, executable price quotations of the fixed income securities and other assets held by the Fund are available from major broker-dealer firms or on the exchange on which they are traded, if applicable. Intra-day price information is available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.

Information regarding market price and volume of the Shares is and will be continually available on a real-time basis.

14 The NAV of the Fund’s Shares generally is calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m. Eastern time (the “NAV Calculation Time”). NAV per Share is calculated by dividing the Fund’s net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund’s NAV, see Registration Statement.

15 Under accounting procedures to be followed by the Fund, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“+T”). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV as of the close of business on the prior business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

16 The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund’s NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

17 See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 7 a.m. to 9:30 a.m. Eastern time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. Eastern time; and (3) Post-Market Session from 4 p.m. to 4:15 p.m. to 8 p.m. Eastern time).

18 See Form N–1A, Item 9. The Commission has determined that the Disclosed Portfolio, the Indicative Value, and the NAV will form the basis for the Fund’s valuation.

19 Currently, the NASDAQ OMX Global Index Data Service (“GIDS”) is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETPs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.
basis throughout the day on brokers’ computer screens and other electronic services. The previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via UTP Level 1, as well as Nasdaq proprietary quote and trade services.

Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121; for example, the Shares of the Fund will be halted if the “circuit breaker” parameters in Nasdaq Rule 4120(a)(11) are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio for the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq’s existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 7:00 a.m. until 8:00 p.m. Eastern time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

Nasdaq believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on Nasdaq during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through Nasdaq will be subject to FINRA’s surveillance procedures for derivative products, including Managed Fund Shares. The Exchange may obtain information via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members or affiliates of the ISG. The Exchange prohibits the distribution of material non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to theFund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

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

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 a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on Nasdaq during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. The Adviser is affiliated with a broker-dealer and has implemented a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio. In addition, as noted above, investors will 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. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing

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21 FINRA surveils trading on Nasdaq pursuant to a regulatory services agreement. Nasdaq is responsible for FINRA’s performance under this regulatory services agreement.
22 For a list of the current members and affiliate members of ISG, see www.isgportal.com. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.
agreement. Under normal circumstances, the Fund will invest at least 80% of its assets in high yield debt securities. The Fund’s exposure to any single issuer generally will be limited to 5% of the Fund’s assets. The Fund’s exposure to any single country (other than the United States) generally will be limited to 20% of the Fund’s assets. The Fund does not currently intend to invest in emerging market countries. The Fund’s long positions may total up to 130% of the Fund’s Managed Assets. The Fund will take short positions in securities that the Adviser believes in the aggregate will underperform the Index. These securities may consist of securities included in the Index or other securities, including U.S. Treasury securities, which the Adviser believes in the aggregate will underperform the Index. The Fund’s short positions may total up to 30% of the Fund’s Managed Assets.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Fund’s portfolio holdings will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service will be widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before the commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund’s calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services, and quotation and last sale information for the Shares will be available via UTP Level 1, as well as Nasdaq proprietary quote and trade services. Intra-day, executable price quotations on high yield debt securities, as well as derivative instruments are available from major broker-dealer firms. Intra-day price information is available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.

The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted if the circuit breaker parameters in Nasdaq Rule 4120(a)(11) have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund’s holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will 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

Nasdaq 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.

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

Written comments were neither solicited nor received.

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

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

IV. Solicitation of Comments

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

Electronic Comments
• Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml); or
• Send an email to rule-comments@sec.gov. Please include File Number SR–NASDAQ–2012–147 on the subject line.

Paper Comments
• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–147. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between 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–2012–147 and should be submitted on or before January 31, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.25
Kevin M. O’Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Order Approving a Proposed Rule Change To Address the Authority To Cancel Orders When a Technical or Systems Issue Occurs and To Describe the Operation of Routing Service Error Accounts

January 4, 2013.

I. Introduction

On November 8, 2012, the C2 Options Exchange, Incorporated (“Exchange” or “C2”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) and Rule 19b–4 thereunder,2 a proposed rule change to (i) address the authority of the Exchange to cancel orders (or release routing-related orders) when a technical or systems issue occurs; and (ii) describe the operation of an Exchange error account(s) and routing broker error account(s), which may be used to liquidate unmatched executions that may occur in the provision of the Exchange’s routing service. The proposed rule change was published for comment in the Federal Register on November 26, 2012.3 The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

In its proposal, the Exchange states that it operates a system of trading that allows automatic executions to occur electronically.4 As part of this infrastructure, the Exchange states that it automatically routes orders to other exchanges under certain circumstances. These routing services are provided in conjunction with one or more routing brokers that are not affiliated with the Exchange.5 Mechanically, when the Exchange receives an order from a Trading Permit Holder that is held in the Exchange system and determines to route an order to another exchange, the Exchange provides the routing broker with a corresponding order and instructions to route the order to another exchange. The routing broker then sends the corresponding order to the other exchange.

In its proposal,6 C2 states that the Exchange may encounter situations that make it necessary to cancel orders (or release routing-related orders),7 and to resolve error positions that result from errors of the Exchange, routing brokers, or another exchange.8

Proposed Rule 6.47 (Order Cancellation/Release)

New C2 Rule 6.47 provides C2 with general authority to cancel orders as it deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, a routing broker in connection with the routing service provided under C2 Rule 6.36, or another exchange to which an Exchange order has been routed. It also provides that a routing broker may only cancel orders being routed to another exchange based on the Exchange’s standing or specific instructions or as otherwise provided in the Exchange Rules. C2 will be required to provide notice of the cancellation to affected Trading Permit Holders as soon as practicable.8

Paragraph (b) of the rule provides that the Exchange may also determine to release orders being held on the Exchange awaiting an away exchange execution as it deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, a routing broker, or another exchange to which an order has been routed. Paragraph (c) of the rule provides that, for purposes of Rule 6.47, technical or system issues would include, without limitation, instances where the Exchange has not received confirmation of an execution (or cancellation) on another exchange from a routing broker within a response time interval designated by the Exchange, which interval may not be less than three (3) seconds.

Proposed Rule 6.37 (Routing Service Error Accounts)

New C2 Rule 6.37 provides that each routing broker shall maintain, in the name of the routing broker, one or more accounts for the purpose of liquidating error positions. In addition the Exchange may also maintain, in the name of the Exchange, one or more Exchange error accounts (“Exchange Error Account”) for the purposes of liquidating error positions, subject to the procedures prescribed in new C2 Rule 6.37.

Paragraph (a) of the rule provides that errors to which the rule applies include any action or omission by the Exchange, a routing broker, or another exchange to which an Exchange order has been routed, that result in an unmatched trade position due to the execution of an order that is subject to the away market routing service and for which there is no corresponding order to pair with the execution (each a “routing error”); and that such routing errors would include, without limitation, positions resulting from determinations by the Exchange to cancel or release an order pursuant to C2 Rule 6.47.

Paragraph (b) of the rule provides that, generally, each routing broker will use its own error account to liquidate error positions. In certain circumstances, however, the Exchange may use an Exchange Error Account. In particular, in instances where the routing broker is unable to use its own error account (e.g., due to a technical, systems or other issue that prevents the routing broker from doing so)9 or where the error is due to a technical or systems issue at the Exchange, the Exchange