SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Relating to the Listing and Trading of the Shares of the First Trust Senior Loan Fund of First Trust Exchange-Traded Fund IV

March 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) or “Exchange Act”)1 and Rule 19b–4 thereunder,2 notice is hereby given that on February 21, 2013, The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change, which filing was amended and replaced in its entirety by Amendment No. 2 thereto on March 7, 2013, as described in Items I, II, and III below, which Items have been prepared by Nasdaq.3 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 Senior Loan Fund (the “Fund”) of First Trust Exchange-Traded Fund IV (the “Trust”) under NASDAQ Rule 5735 (“Managed Fund Shares”).4 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 Shares5 on the Exchange. The Fund will be an actively managed exchange-traded fund (“ETF”). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on September 15, 2010. The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (“Registration Statement”) with the Commission.6 The Fund is a series of the Trust.

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.7 The Bank of New York Mellon Corporation (“BNY”) will act as the administrator, accounting agent, custodian and transfer agent to the Fund.8

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

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

6 See Post-Effective Amendment No. 15 to Registration Statement on Form N–1A for the Trust, dated December 14, 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.

7 The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act (the “Exemptive Order”). See Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795). 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 deposits and satisfying redemption requests with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. § 77a).

8 The investment banking and custodial services departments at BNY are segregated and independent departments. BNY will not exercise any investment discretion with respect to the Fund.
Information concerning the composition and/or changes to such investment company portfolio. In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund’s portfolio 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 Senior Loan Fund Principal Investments

The Fund’s primary investment objective is to provide high current income. The Fund’s secondary investment objective is the preservation of capital.

According to the Registration Statement, in pursuing its investment objective, the Fund, under normal market conditions, will seek to outperform a primary and secondary loan index (as described below), by investing at least 80% of its net assets (plus any borrowings for investment purposes) in “Senior Loans,” which are described further below in “Description of Senior Loans and the Senior Loan Market.” The S&P/LSTA U.S. Leveraged Loan 100 Index (the “Primary Index”) is comprised of the 100 largest Senior Loans, as measured by the borrowed amounts outstanding. The Markit iBoxx USD Leveraged Loan Index (the “Secondary Index”) selects the 100 most liquid Senior Loans in the market. In addition to size, liquidity is also measured, in part, based on the number of market makers who trade a specific Senior Loan and the number and size of transactions in the context of the prevailing bid/ask spread. Markit utilizes proprietary models for the Secondary Index composition and updates to the Secondary Index. The Fund will not seek to track either the Primary or Secondary Index, but rather will seek to outperform those indices. It is anticipated that the Fund, in accordance with its principal investment strategy, will invest approximately 50% to 75% of its net assets in Senior Loans that are eligible for inclusion in and meet the liquidity thresholds for the Primary or Secondary Indices. Each of the Fund’s Senior Loan investments is expected to have no less than $250 million USD par outstanding.

The Adviser considers Senior Loans to be the first lien senior secured floating rate bank loans. A Senior Loan is an advance or commitment of funds made by one or more banks or similar financial institutions to one or more corporations, partnerships or other business entities and typically pays interest at a floating or adjusting rate that is determined periodically at a designated premium above a base lending rate, most commonly the London-Interbank Offered Rate ("LIBOR"). A Senior Loan is considered senior to all other unsecured claims against the borrower, senior to or pari passu with all other secured claims, meaning that in the event of a bankruptcy the Senior Loan, together with other first lien operating, is entitled to be the first to be repaid out of proceeds of the assets securing the loans, before other existing unsecured claims or interests receive repayment. However, in bankruptcy proceedings, there may be other claims, such as taxes or additional advances which take precedence. The Fund will invest in Senior Loans that are made predominantly to businesses operating in North America, but may also invest in Senior Loans made to businesses in other parts of the world.

Under normal market conditions, the Fund expects to maintain an average interest rate duration of less than 90 days. In selecting securities for the Fund, the Adviser will seek to construct a portfolio of loans that it believes are less volatile than the general loan market. In addition, when making investments, the Adviser will seek to maintain appropriate liquidity and price transparency for the Fund. On an ongoing basis, the Adviser will add or remove those individual loans that it believes will cause the Fund to outperform or underperform, respectively, either the Primary or Secondary Index. The Fund will include borrowers that the Adviser believes have incurred a significant percentage of debt compared to equity issued and thus are highly leveraged.
have strong credit metrics, based on its evaluation of cash flows, collateral coverage and management teams. The key considerations of portfolio construction include liquidity, diversification and relative value.

When identifying prospective investment opportunities in Senior Loans, the Adviser currently intends to invest primarily in Senior Loans that are below investment grade quality and will rely on fundamental credit analysis in an effort to attempt to minimize the loss of the Fund’s capital and to select assets that provide attractive relative value. The Adviser expects to invest in Senior Loans or other debt of companies possessing the attributes described below, which it believes will help generate higher risk adjusted total returns. The Adviser does not intend to purchase Senior Loans that are in default. However, the Fund may hold a Senior Loan that has defaulted subsequent to its purchase by the Fund. The Adviser intends to invest in Senior Loans or other debt of companies that it believes have developed strong positions within their respective markets and exhibit the potential to maintain sufficient cash flows and profitability to service their obligations in a range of economic environments. The Adviser will seek to invest in Senior Loans or other debt of companies that it believes possess advantages in scale, scope, customer loyalty, product pricing, or product quality versus their competitors, thereby minimizing business risk and protecting profitability.

The Adviser will seek to invest in Senior Loans or other debt of established companies it believes have demonstrated a record of profitability and cash flows over several economic cycles. The Adviser does not intend to invest in Senior Loans or other debt of primarily start-up companies, companies in turnaround situations or companies with speculative business plans.

The Adviser intends to focus on investments in which the Senior Loans or other debt of a target company has an established track record of success. The Adviser will typically require companies to have in place proper incentives to align management’s goals with the Fund’s goals.

The Adviser will seek to invest in a well-diversified portfolio of Senior Loans or other debt among borrowers and industries, thereby potentially reducing the risk of a downturn in any one company or industry having a disproportionate impact on the value of the Fund’s holdings. Loans, and the collateral securing them, are typically monitored by agents for the lenders, which may be the originating bank or banks.

Historically, the amount of public information available about a specific Senior Loan has been less extensive than if the loan were registered or exchange-traded. As noted above, the loans in which the Fund will invest will, in most instances, be Senior Loans, which are secured and senior to other indebtedness of the borrower. Each Senior Loan will generally be secured by collateral such as accounts receivable, inventory, equipment, real estate, intangible assets such as trademarks, copyrights and patents, and securities of subsidiaries or affiliates. The value of the collateral generally will be determined by reference to financial statements of the borrower, by an independent appraisal, by obtaining the market value of such collateral, in the case of cash or securities if readily ascertainable, or by other customary valuation techniques considered appropriate by the Adviser. The value of collateral may decline after the Fund’s investment, and collateral may be difficult to sell in the event of default. Consequently, the Fund may not receive all the payments to which it is entitled. By virtue of their senior position and collateral, Senior Loans typically provide lenders with the first right to cash flows or proceeds from the sale of a borrower’s collateral if the borrower becomes insolvent subject to the limitations of bankruptcy law, which may provide higher priority to certain claims such as employee salaries, employee pensions, and taxes. This means Senior Loans are generally repaid before unsecured bank loans, corporate bonds, subordinated debt, trade creditors, and preferred or common stockholders. To the extent that the Fund invests in unsecured loans, if the borrower defaults on such loan, there is no specific collateral on which the lender can foreclose. If the borrower defaults on a subordinated loan, the collateral may not be sufficient to cover both the senior and subordinated loans.

There is no organized exchange on which loans are traded and reliable market quotations may not be readily available. A majority of the Fund’s assets are likely to be invested in loans that are less liquid than securities traded on national exchanges. Loans with reduced liquidity involve greater risk than securities with more liquid markets. Available market quotations for such loans may vary over time, and if the credit quality of a loan unexpectedly declines, secondary trading of that loan may decline for a period of time. During periods of infrequent trading, valuing a loan can be more difficult and expensive than if the loan were registered or exchange-traded. As noted above, the loans in which the Fund will invest will, in most instances, be Senior Loans, which are secured and senior to other indebtedness of the borrower. Each Senior Loan will generally be secured by collateral such as accounts receivable, inventory, equipment, real estate, intangible assets such as trademarks, copyrights and patents, and securities of subsidiaries or affiliates. The value of the collateral generally will be determined by reference to financial statements of the borrower, by an independent appraisal, by obtaining the market value of such collateral, in the case of cash or securities if readily ascertainable, or by other customary valuation techniques considered appropriate by the Adviser. The value of collateral may decline after the Fund’s investment, and collateral may be difficult to sell in the event of default. Consequently, the Fund may not receive all the payments to which it is entitled. By virtue of their senior position and collateral, Senior Loans typically provide lenders with the first right to cash flows or proceeds from the sale of a borrower’s collateral if the borrower becomes insolvent subject to the limitations of bankruptcy law, which may provide higher priority to certain claims such as employee salaries, employee pensions, and taxes. This means Senior Loans are generally repaid before unsecured bank loans, corporate bonds, subordinated debt, trade creditors, and preferred or common stockholders. To the extent that the Fund invests in unsecured loans, if the borrower defaults on such loan, there is no specific collateral on which the lender can foreclose. If the borrower defaults on a subordinated loan, the collateral may not be sufficient to cover both the senior and subordinated loans.
trading activity, wide bid/ask spreads and extended trade settlement periods. Senior Loans will usually require, in addition to scheduled payments of interest and principal, the prepayment of the Senior Loan from free cash flow. The degree to which borrowers prepay Senior Loans, whether as a contractual requirement or at their election, may be affected by general business conditions, the financial condition of the borrower and competitive conditions among loan investors, among others. As such, prepayments cannot be predicted with accuracy. Recent market conditions, including falling default rates among others, have led to increased prepayment frequency and loan renegotiations. These renegotiations are often on terms more favorable to borrowers. Upon a prepayment, either in part or in full, the actual outstanding debt on which the Fund derives interest income will be reduced. However, the Fund may receive a prepayment penalty fee assessed against the prepaying borrower.

Other Investments

According to the Registration Statement, in addition to the principal investments described above, the Fund may invest in other investments, as described below. The Fund may invest in (1) fixed-rate or floating-rate income-producing securities (including U.S. government debt securities, investment grade and below-investment grade corporate debt securities), (2) preferred securities and (3) securities of other investment companies registered under the 1940 Act.

The Fund will not invest in floating rate loans of companies whose financial condition is troubled or uncertain and that have defaulted on current debt obligations, as measured at the time of investment. Although many of the Fund’s investments will consist of securities rated between the categories of BB and B as rated by S&P, the Fund reserves the right to invest in debt securities, including Senior Loans, of any credit quality, maturity and duration.

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. Corporate debt securities are issued by businesses to finance their operations. 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. Commercial paper has the shortest term and is usually unsecured. Corporate debt may be rated investment grade or below investment grade and may carry fixed or floating rates of interest.

The Fund may invest in debt securities issued by non-U.S. companies that are traded over-the-counter or listed on an exchange. Non-U.S. debt securities in which the Fund may invest include debt securities issued or guaranteed by companies organized under the laws of countries other than the United States, debt securities issued or guaranteed by foreign, national, provincial, state, municipal or other governments with taxing authority or by their agencies or instrumentalities and debt obligations of supranational governmental entities such as the World Bank or the European Union. These debt obligations may be U.S. dollar-denominated or non-U.S. dollar-denominated. Non-U.S. debt securities also include U.S. dollar-denominated debt obligations, such as “Yankee Dollar” obligations, of foreign issuers and of supranational governmental entities. Yankee Dollar obligations are U.S. dollar-denominated obligations issued in the U.S. capital markets by foreign corporations, banks and governments. Foreign debt securities also may be traded on foreign securities exchanges or in over-the-counter capital markets.

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.

The Fund may invest in short-term debt securities (as described herein), money market funds and other cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings may vary and depends on several factors, including market conditions.

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.

Under normal market conditions, up to 10% of the net assets of the Fund may be denominated in currencies other than the U.S. dollar. The Fund intends to hedge its non-U.S. dollar holdings. 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

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15 The equity securities in which the Fund may invest will 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.

16 According to the Adviser, “investment grade” means securities rated in the Baa/BBB categories or above by one or more Nationally Recognized Statistical Rating Organizations (“NRSROs”). If a security is rated by multiple NRSROs and receives different ratings, the Fund will treat the security as being rated in the lowest rating category received from an NRSRO. Rating categories may include sub-categories or gradations indicating relative standing.
currency exchange rates, the Fund is authorized to enter into various currency exchange transactions.

As noted above, the Fund may invest in securities of other 1940 Act registered open-end or closed-end investment companies, including ETFs, in the amounts that are permitted by the 1940 Act and the applicable Exemptive Order from the Commission granted to the Trust, on behalf of the Fund, but not to exceed 20% of the Fund’s net assets. To the extent that an investment company invests primarily in a specified asset class held by the Fund, such an investment in the investment company will be deemed to be an investment in the underlying asset class for purposes of the Fund’s investment limitations. In addition, the Fund may invest a portion of its assets in exchange-traded pooled investment vehicles (other than investment companies) that invest primarily in securities of the types in which the Fund may invest directly.

The Fund may receive equity, warrants, bonds and other such securities as a result of the restructuring of the debt of an issuer, or a reorganization of a senior loan or bond, or 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, restrictions and strategies as described herein.

Subject to limitations, the Fund may invest in secured loans that are not first lien loans or loans that are unsecured. These loans have the same characteristics as Senior Loans except that such loans are not first in priority of repayment and/or may not be secured by collateral. Accordingly, the risks associated with these loans are higher than the risks for loans with first priority over the collateral. Because these loans are lower in priority and/or unsecured, they are subject to the additional risk that the cash flow of the borrower may be insufficient to meet scheduled payments after giving effect to the secured obligations of the borrower or in the case of a default, recoveries may be lower for unsecured loans than for secured loans.19

The Fund will not invest 25% or more of the value of its total assets in securities of issuers in any one industry.20

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 Rule 144A securities, junior subordinated loans and unsecured loans deemed illiquid by the Adviser. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of 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.21

Except for investments in ETFs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S. equity issues.

The Fund will not invest in options contracts, futures contracts or swap agreements.

In certain situations or market conditions, the Fund may temporarily depart from its normal investment policies and strategies provided that the alternative is consistent with the Fund’s investment objective and is in the best interest of the Fund. For example, the Fund may hold a higher than normal proportion of its assets in cash in times of extreme market stress.22 The Fund may borrow money from a bank as permitted by the 1940 Act or other governing statute, by applicable rules thereunder, or by Commission or other regulatory agency with authority over the Fund, but only for temporary or emergency purposes. The use of temporary investments is not a part of a principal investment strategy of the Fund.

The Fund will be classified as a “non-diversified” investment company under the 1940 Act.23

The Fund intends to qualify for and to elect treatment as a separate regulated investment company (“RIC”) under Subchapter M of the Internal Revenue Code.24

The Fund’s investments will be consistent with the Fund’s investment objective and will not be used to enhance leverage.

Criteria To Be Applied to the Fund

While the Fund, which would be listed pursuant to the criteria applicable to actively managed funds under Nasdaq Rule 5735, is not eligible for listing under Nasdaq Rule 5705(b) applicable to listing and trading of Index Fund Shares based on a securities index, the Adviser represents that, under normal market conditions, the Fund would generally satisfy the generic fixed income initial listing requirements in Nasdaq Rule 5705(b)(4) on a continuous basis measured at the time of purchase, as described below.25

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19 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 the Exemptive Order. The ETFs in which the Fund may invest include Index Fund Shares and Portfolio Depositary Receipts (as described in NASD Rule 5705); and Managed Fund Shares (as described in Nasdaq Rule 5735). While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (e.g., 2X or 3X) ETFs.

20 See Form N-1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, e.g., Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

21 The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets 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.

22 See supra note 10.

23 The diversification standard is set forth in Section 5(b)(1) of the 1940 Act (15 U.S.C. 80a–5).


25 Nasdaq Rule 5705(b)(4) sets forth generic listing criteria applicable to listing under Rule 19b-4(e) under the Exchange Act of Index Fund Shares (“IF Shares” or “Index Fund Shares”) based on an index or portfolio of “Fixed Income Securities,” which are debt securities that are notes, bonds, debentures or evidence of indebtedness, but not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof. Nasdaq Rule 5705(b)(4)(A) as follows: “Eligibility Criteria for Index Components. Upon the initial listing of a series of Index Fund Share of business pursuant to Rule 19b-4(e) under the Act, each component of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria: (i) The index or portfolio must consist of Fixed Income Securities; (ii) Components that in aggregate account for at least 75% of the weight of the index or portfolio shall have a minimum original principal amount outstanding of...
With respect to the requirement of Nasdaq Rule 5705(b)(4)(A)(i), as noted in the Registration Statement, the Fund will invest at least 80% of its net assets (plus any borrowings for investment purposes) in Senior Loans. The Adviser expects that substantially all of the Fund’s assets will be invested in Fixed Income Securities or cash/cash-like instruments. With respect to the requirement of Nasdaq Rule 5705(b)(4)(A)(ii), the Adviser expects that substantially all, but at least 75% of the Fund’s portfolio will be invested in loans that have an aggregate outstanding exposure of greater than $100 million. With respect to the requirement of Nasdaq Rule 5705(b)(4)(A)(iii), the Adviser represents that the Fund will not typically invest in convertible securities; however, should the Fund make such investments, the Adviser would direct the Fund to divest any converted equity security as soon as practicable.

With respect to the requirement of Nasdaq Rule 5705(b)(4)(A)(iv), the Adviser represents that the Fund will not concentrate its investments in excess of 30% in any one security (excluding Treasury Securities), and will not invest more than 65% of its assets in five or fewer securities (excluding Treasury Securities).

With respect to the requirement of Nasdaq Rule 5705(b)(4)(A)(v), the Adviser represents that the Fund may make investments in a continuous basis in compliance with such requirement at the time of purchase; however, the market for Senior Loans differs in several material respects from the market of other fixed income securities (e.g., bonds). A significant percentage of the Senior Loan market would not meet the criteria set forth in Nasdaq Rule 5705(b)(4)(A)(vi), but would be readily tradable in the secondary market. For the 12 month period ending August 12, 2012, 53.4% of the borrowers of primary Senior Loans (also known as leveraged loans) had total indebtedness of $1 billion or less and Senior Loans outstanding of $250 million or more. (Source: S&P). In order to add to the Fund’s diversification and to expand the Fund’s investment universe, the Fund may invest in Senior Loans borrowed by entities that would not meet the criteria set forth in Nasdaq Rule 5705(b)(4)(A)(vi) above provided the borrower has at least $250 million outstanding in Senior Loans. The Senior Loans borrowed by such entities would be well known to participants in the Senior Loan markets, would typically attract multiple market makers, and would share liquidity and transparency characteristics of senior secured debt borrowed by entities meeting the criteria in the generic listing criteria of Nasdaq Rule 5705(b)(4)(A).

Description of Senior Loans and the Senior Loan Market

The Adviser represents that Senior Loans represent debt obligations of sub-investment grade corporate borrowers, similar to high yield bonds; however, Senior Loans are different from traditional high yield bonds in several important respects. First, Senior Loans are typically senior to other obligations of the borrower and secured by the assets of the borrower. Senior Loans rank at the top of a borrower’s capital structure in terms of priority of payment, ahead of any subordinated debt (high yield) or the borrower’s common equity. These loans are also secured, as the holders of these loans have a lien on most if not all of the corporate borrower’s plant, property, equipment, receivables, cash balances, licenses, trademarks, etc. Furthermore, the corporate borrower of Senior Loans executes a credit agreement that typically restricts what it can do (debt incurrence, asset dispositions, etc.) without the lenders’ approval, and, in addition, often requires the borrower to meet certain ongoing financial covenants (EBITDA, leverage tests, etc.). Finally, Senior Loans are floating rate obligations which typically pay a fixed spread over 3 month LIBOR. Institutions access the market today primarily through commingled funds or separately managed accounts. Individual investors have gained exposure to Senior Loans primarily through registered open-end or closed-end mutual funds and business development companies or occasionally through limited partnerships.

The performance of a Senior Loans portfolio is driven by credit selection. Investing in Senior Loans involves detailed credit analysis and sound investment judgment culminating in the timely payout of interest and ultimate return of principal. Loans are generally prepaid at any time, typically without penalty. Loans are typically purchased at close to 100 (“par”) and are also typically repaid at 100; the return to the investor comes from the quarterly interest coupons and the return of principal. Underperformance comes from making investment misjudgments whereby the corporate borrower fails to repay the loan at maturity or otherwise defaults on the obligation.26

The Adviser represents that the Senior Loan market, in terms of total outstanding loans by dollar volume is approximately equal in size to the high yield corporate bond market in the U.S.—between $1.2 trillion and $1.5 trillion. The market for Senior Loans is almost exclusively comprised of non-investment grade corporate borrowers. The Loan Syndication and Trading Association (“LSTA”), a trade group sponsored by both underwriters of and institutional investors in senior bank loans, has been tracking trading volumes and bid-offer spreads for the asset class since 2007. For the month ended June 30, 2012—a representative period—$30 billion of Senior Loans changed hands representing 1,109 individual transactions. (Source: LSTA.) Average quarterly Senior Loan trading volume exceeded $100 billion during 2011. Quarterly trading volumes fell modestly to $98 billion in the second calendar quarter of 2012.27

26 Additional capital features inherent to Senior Loans include the following: such loans are subject to mandatory and discretionary prepayments and can be prepaid in full, often without penalty, for a variety of reasons; companies may opt to refinance an existing loan at a lower spread or repay the loan with a high yield bond issuance; required excess cash flow sweeps; covenants requiring loan prepayment from proceeds of asset sales; and quarterly amortization.

27 As of October 2012, 195 open-ended loan funds and open-ended bond funds were invested in the Senior Loan market as a primary or secondary asset class. (Source: Morningstar.) As of October 2012, there were approximately $65 billion of assets under management in 39 open-ended funds and approximately $252 billion of assets under management in 156 open-ended high yield bond funds. Eighty-six of the 158 open-ended high yield...
The Fund, as noted above, will primarily invest in the more liquid and higher rated segment of the Senior Loan market. The average credit rating of the Senior Loans that the Fund typically will hold will be rated between the categories of BB and B as rated by S&P. The most actively traded loans will generally have a tranche size outstanding (or total float of the issue) in excess of $250 million. The borrowers of these broadly syndicated bank loans will typically be followed by many “buy-side” and “sell-side” credit analysts who will in turn rely on the borrower to provide transparent financial information concerning its business performance and operating results. The Adviser represents that such borrowers typically provide significant financial transparency to the market through the delivery of financial statements on at least a quarterly basis as required by the executed credit agreements. Additionally, bid and offers in the Senior Loans are available throughout the trading day on larger Senior Loans issues with multiple dealer quotes available.

The Adviser represents that the underwriters, or agent banks, which distribute, syndicate and trade Senior Loans are among the largest global financial institutions, including JPMorgan, Bank of America, Citigroup, Goldman Sachs, Morgan Stanley, Wells Fargo, Deutsche Bank, Barclays, Credit Suisse and others. It is common for multiple firms to act as underwriters and market makers for a specific Senior Loan issue. For example, two underwriters may co-underwrite and fund a Senior Loan that has a $1 billion institutional tranche. One of the underwriters acting as syndication agent for the financing, will then draft an offering memorandum (similar to a prospectus for an initial public offering) for the Fund, which will then be presented to potential investors who will then work with their investment adviser to answer credit questions, investors’ commitments are collected by the underwriter. The underwriter will typically allocate the loan to 80–120 investors within the following week, with the largest position representing 3–5% of the tranche size in a successful syndication. The underwriters will both make executable two sided markets in the loan with eighth to a quarter point bid/ask spreads on sizes in the $2 million to $20 million range, depending on the issue. Other banks also have Senior Loan trading desks that make secondary bid/ask markets in the loans after they are allocated. Senior Loan investors can also obtain information on Senior Loans and their borrowers from numerous public sources, including Bloomberg, FactSet, public financial statement filings (Forms 10–K and 10–Q), and sell side research analysts.

The Adviser represents that the segment of the Senior Loan market that the Fund will focus on is highly liquid. Senior Loans of $250 million or more in issuance are typically quite liquid and will have multiple market makers and typically 75 or more institutional holders. The standard bid/offer spreads for such loans are 1⁄4 to 1⁄2 point, although the largest firms can transact on a 1/8th point market across dealers for Senior Loans of $250 million or more outstanding.28

The Adviser represents that, while Senior Loans are not reported through TRACE,29 there is significant transparency with dealers updating investors on trades and trading activity throughout the day. Dealers update their “trading runs” of Senior Loans throughout the day and distribute these via electronic messaging to the institutional investor community. The Adviser represents further that, upon commencement of trading in the Fund, the Adviser would ensure that all “Authorized Participants” (as described below) for the Fund were added to these intraday market maker Senior Loan “trading runs.”

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28 The Exchange notes that the PowerShares Senior Loan 100 Index Portfolio (Symbol: BKLN), an index-based ETF listed on NYSE Arca since March 5, 2011 under NYSE Arca Equities Rule 5.2(j)(3). The underlying index for BKLN is the S&P/LSTA U.S. Leveraged Loan 100 Index, the Fund’s Primary Index. As of November 20, 2012, BKLN had assets under management of approximately $1.28 billion. Since inception, BKLN’s average daily trading volume has been 545,065 shares, with an average premium/discount to NAV of 0.43%

29 TRACE (Trade Reporting and Compliance Engine), is a vehicle developed by the Financial Industry Regulatory Authority (“FINRA”) that facilitates the mandatory over-the-counter secondary market transactions in eligible fixed income securities.
terms of par amount outstanding. There is no minimum size requirement on individual facilities in the Primary Index, but the LLI universe minimum is US$ 50 million. Only the 100 largest first lien facilities from the LLI that meet all eligibility requirements are considered for inclusion. The Primary Index covers all borrowers regardless of origin; however, all facilities must be denominated in U.S. dollars.

A Primary Index addition is generally made only if a vacancy is created by a Primary Index deletion. Primary Index additions are reviewed on a weekly basis and are made according to par outstanding and overall liquidity. Liquidity is determined by the par outstanding and number of market bids available. Facilities are retired when they are priced by "LSTA/LPC Mark-to-Market Pricing" or when the facility is repaid. Each loan facility’s total return is calculated by aggregating the interest return, reflecting the return due to interest paid and accrued interest, and price return, reflecting the gains or losses due to changes in end-of-day prices and principal prepayments.

The Primary Index is maintained in accordance with the following rules:

—The Primary Index is reviewed each week to ensure that it includes 100 Index Loans.
—A complete review and rebalancing of all Primary Index constituents is performed on a semi-annual basis coinciding with the last weekly rebalance in June and in December.
—Eligible loan facilities approved by the Primary Index Committee are added to the Primary Index during the semi-annual rebalancing. Eligible loan facilities are added to the Primary Index at the weekly review only if other facilities are repaid or otherwise drop out of the Primary Index, in order to maintain 100 Index Loans.
—Any loan facility that fails to meet any of the eligibility criteria or that has a term to maturity less than or equal to 12 months plus 1 calendar day, as of the weekly rebalancing date, will not be included in the Primary Index.
—Par amounts of Primary Index loans will be adjusted on the weekly rebalancing date to reflect any changes that have occurred since the previous rebalancing date, due, for example, to partial pre-payments and pay-downs.

—Constituent facilities are capped at 2% of the Primary Index and drawn-down at the weekly rebalancing. When a loan facility exceeds the 2% cap, the weight is reduced to 1.90% and the proceeds are invested in the other Primary Index components on a relative-weight basis.

The Primary Index is normally reviewed and rebalanced on a weekly basis to maintain 100 constituents. The Primary Index Committee (as described below), nevertheless, reserves the right to make adjustments to the Primary Index at any time that it believes appropriate.

Weekly Primary Index rebalancing maintenance (additions, deletions, pay-downs, and other changes to the Primary Index) is based on data as of Friday (or the last business day of the week in the case of holidays) and is announced the following Wednesday (or Tuesday in the case of a holiday) for implementation on the following Friday. Publicly available information, up to and including each Wednesday’s close, is considered in each weekly rebalancing.

Primary Index changes published in the announcement generally are not subject to revision and will become effective on the date listed in the announcement.

The Primary Index Committee

The Primary Index Committee maintains the Primary Index. The Primary Index Committee is comprised of employees of S&P. The Primary Index Committee is chaired by the Managing Director and Primary Index Committee Chairman at S&P.

Meetings are held annually and, from time to time, as needed. It is the sole responsibility of the Primary Index Committee to decide on all matters relating to methodology, maintenance, constituent selection and index procedures. The Primary Index Committee makes decisions based on all available information and primary index discussions are kept confidential to avoid any unnecessary impact on market trading.

Markit iBoxx USD Liquid Leveraged Loan Index

According to the Secondary Index Description, the Markit iBoxx USD Liquid Leveraged Loan Index is a subset of the benchmark Markit iBoxx USD Leveraged Loan Index (USD LLI). The Secondary Index limits the number of constituent loans by selecting larger and more liquid loans from the wider USD LLI universe (as determined by the Liquidity Ranking Procedure, described below). The procedure utilizes daily liquidity scores from the Markit Loan Pricing Service, which is a broader measure of liquidity, summarizing the performance of each loan across several liquidity metrics, such as number of quotes, or bid-offer sizes.35

The selection process for the Secondary Index will be used on the index inception date and at every monthly rebalancing ("Secondary Index Selection Date"). The selection process will involve the identification of the eligible universe using the eligibility criteria set out below. If the size of the eligible universe is greater than the target number of loans, the Liquidity Ranking Procedure will be used to determine the final index constituents. Once the index members are selected, they are automatically carried forward to the following month’s selection, unless they no longer satisfy the eligibility criteria or enter a prolonged period of relative illiquidity. The Secondary Index eligibility criteria and the liquidity ranking procedure are described in further detail below.

The following six selection criteria are used to derive the eligible universe from the Markit iBoxx USD- denominated loan universe:

1. Loan type; minimum size; liquidity/depth of market; spread; credit rating; and minimum time to maturity.

2. Only USD-denominated loans are eligible for the Secondary Index.

Eligible loan types are fully funded term loans (fixed and floating rate) and default loans. Ineligible loan types are deposit-funded tranche; letters of credit; mezzanine; PIK Toggle; PIK; pre-funded

33 LSTA/LPC Mark-to-Market Pricing is used to price each loan in the index. LSTA/LPC Mark-to-Market Pricing is based on bid/ask quotes gathered from dealers and is not based upon derived pricing models. The Primary Index uses the average bid for its market value calculation.
acquisition: revolving credit; strips; synthetic lease; and unfunded loans.

A minimum facility size of $500 million USD nominal is required to be eligible for the Secondary Index. A constituent is removed at the next rebalancing if its nominal outstanding falls below $500 million USD.

According to the Secondary Index Description, liquidity and depth of the market can be measured by the number of prices available for a particular loan and the length of time prices have been provided by the minimum required number of price contributors. The liquidity check is based on the 3-month period prior to the rebalancing cut-off date (liquidity test period). Only loans with a minimum liquidity/depth of 2 for at least 50% of trading days of the liquidity test period are eligible. Loans issued less than 3 months prior to the rebalancing cut-off date require a minimum liquidity/depth of 3 for at least 50% of trading days in the period from the issue date to the rebalancing cut-off date.

Only sub-investment grade loans are eligible for the Secondary Index. Each rated loan is assigned a composite index rating based on the ratings from Moody’s and S&P’s. If more than one agency publishes a rating for a loan, the average of the ratings determines the composite rating. The average rating is calculated as the numerical average of the ratings provided. To calculate the average, each rating assigned an integer number as follows: AAA/Aaa is assigned a 1, AA+/Aa1 a 2 etc. The resulting average is rounded to the nearest integer with .5 rounded up. Loans designated as “Not Rated” by both Moody’s and S&P must have a minimum current spread of 125 basis points over LIBOR to be eligible for the Secondary Index. Loans designated as “Not Rated” are not assigned an index rating. Defaulted loans are eligible for the Secondary Index provided they meet all other criteria.37

The initial time to maturity is measured from the loan’s issue date to its maturity date. A minimum initial time to maturity of one year is required for potential constituents. The minimum time to maturity threshold reduces the Secondary Index turnover and transaction costs associated with short-dated loans. Existing constituents with time to maturities of less than 1 year remain in the Secondary Index until maturity provided they meet all other eligibility criteria.37

In order to determine the final Secondary Index constituents, the loans in the eligible universe are ranked according to their liquidity scores, as provided by the Markit Loan Pricing Service. Each loan in the MarkitWSO database38 is assigned a daily score based on the loan’s performance on the following liquidity metrics:

- Sources Quote: The number of dealers sending out runs.
- Frequency of Quotes: total number of dealer runs.
- Number of Sources with Size: The number of dealer runs with associated size.
- Bid-offer spreads: The average bid-offer spread in dealer runs.
- Average quote size: The average size parsed from quotes.
- Movers Count: The end of day composite contributions which have moved on that day.

Each loan carries a score ranging from 1 to 5 in ascending order of liquidity, depending on the daily values for the above components. A loan with a score of 1 will have the best performance in each of the categories above. In the liquidity ranking procedure described below, average liquidity scores are calculated for each loan, over a calendar one or three month period immediately preceding each rebalancing date.

On the Secondary Index inception day, the target number of loans will be 100. Loans will be removed from the Secondary Index if they are no longer present in the current eligible universe or are not ranked within the first 125 places in terms of 3 month average liquidity score. On every subsequent rebalancing, the number of new loans to be selected will be equal to the number of loans which will be removed from the Secondary Index.

According to the Secondary Index Description, the parameters used in the selection process, including the target number of loans and the eligibility criteria, are subject to an annual review process to ensure that the Secondary Index continues to reflect the underlying loans market. The results of the analysis are submitted to the oversight committee for the Markit iBoxx USD Leveraged Loan Indices (“Oversight Committee”).39 The review will consist of a qualitative and quantitative assessment of any developments in the loans market in terms of market size, depth and overall liquidity conditions of the market together with a recommendation whether current index rules should be modified. Factors that will be considered in the assessment will include: size of the market; new issuance patterns and trends; outstanding number of loans and borrowers; and liquidity conditions.

All Markit iBoxx USD Leveraged Loan Indices are calculated at the end of each business day and re-balanced at the end of each month. The Markit iBoxx USD Leveraged Loans Indices are calculated on the basis of end-of-day prices provided by Markit Loan Pricing services on each recommended Securities Industry and Financial Markets Association (“SIFMA”) U.S. trading day.

On each pricing day, end-of-day bid, mid and ask price quotes for the applicable loans are received from Markit Loan Pricing. Prices for all loans are taken at 4:15 p.m. Eastern time (“E.T.”). Secondary Index data is published and distributed on the next day by 8:00 a.m. E.T. and is available on the Markit index Web site, http://indices.markit.com, and through Bloomberg and Reuters.

Markit will provide bid, mid and ask prices for all eligible loans at the end of each index calculation day. Reference loan data will be provided by Markit, which represents up-to-date reference and transactional information on over 1,000 leveraged loans.

The Shares

The Fund will issue and redeem Shares only in Creation Units at the NAV next determined after receipt of an order on a continuous basis every day except weekends and specified holidays. The NAV of the Fund will be determined once each business day, normally as of the close of trading of the New York Stock Exchange (“NYSE”), generally, 4:00 p.m. E.T. Creation Unit sizes will be 50,000 Shares per Creation Unit. The Trust will issue and sell Shares of the Fund only in Creation Units on a continuous basis through the Distributor, without a sales load (but subject to transaction fees), at their NAV per Share next determined after receipt of an order, on any business day, in proper form pursuant to the terms of the Authorized Participant agreement (as referred to below).

The consideration for purchase of a Creation Unit of the Fund generally will consist of either (i) the in-kind deposit of a designated portfolio of securities (primarily Senior Loans) (the “Deposit Securities”) per each Creation Unit and the Cash Component (defined below), computed as described below or (ii) the cash value of the Deposit Securities.
Market Session (currently 9:30 a.m., E.T.), the list of the names and the required number of shares of each Deposit Security or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. Such Fund Deposit is subject to any applicable adjustments as described below, in order to effect purchases of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities or the required amount of Deposit Cash, as applicable, is made available.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Transfer Agent and only on a business day.

With respect to the Fund, the Custodian, through the NSCC, will make available immediately prior to the opening of business on the Exchange (9:30 a.m. E.T. on each business day, the list of the names and share quantities of the Fund’s portfolio securities ("Fund Securities") or the required amount of Deposit Cash that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form (as defined below) on that day. Fund Securities received on redemption may not be identical to Deposit Securities.

Redemption proceeds for a Creation Unit will be paid either in-kind or in cash or a combination thereof, as determined by the Trust. With respect to in-kind redemptions of the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities as announced by the Custodian on the business day of the request for redemption received in proper form plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the "Cash Redemption Amount"), less a fixed redemption transaction fee and any applicable additional variable charge as set forth in the Registration Statement. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an Authorized Participant by the redeeming shareholder. Notwithstanding the foregoing, at the Trust’s discretion, an Authorized Participant may receive cash in an amount equal to the corresponding cash value of the securities in lieu of the in-kind securities value representing one or more Fund Securities.

The creation/redemption order cut-off time for the Fund is expected to be 4:00 p.m. E.T. for purchases of Shares. On days when the Exchange closes earlier than normal, the Fund may require orders for Creation Units to be placed earlier in the day.

Net Asset Value

The NAV per Share for the Fund will be computed by dividing the value of the net assets of the Fund (i.e., the value of its total assets less total liabilities) by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fees, are accrued daily and taken into account for purposes of determining NAV.40 The NAV of the Fund will be calculated by the Custodian and determined at the close of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) on each day that such exchange is open, provided that fixed-income assets (and, accordingly, the Fund’s NAV) may be valued as of the announced closing time for trading in fixed-income instruments on any day that SIFMA (or the applicable exchange or market on which the Fund’s investments are traded) announces an early closing time. Creation/redemption order cut-off times may also be earlier on such days.

In calculating the Fund’s NAV per Share, investments will generally be valued by using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, a pricing service, or a major market maker (or dealer) or (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service, or a major market maker (or dealer). The Adviser may use various pricing services, or discontinue the use of any pricing service, as approved by the Trust’s Board from time to time. A price obtained from a pricing service based on such pricing service’s valuation matrix may be considered a market valuation. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

In the event that current market valuations are not readily available or such valuations do not reflect current market value, the Trust’s procedures...
require the Adviser’s Pricing Committee to determine a security’s fair value if a market price is not readily available.\(^4\)

In determining such value the Adviser’s Pricing Committee may consider, among other things, (i) price comparisons among multiple sources, (ii) a review of corporate actions and news events, and (iii) a review of relevant financial indicators (e.g., movement in interest rates, market indices, and prices from the Fund’s index providers). In these cases, the Fund’s NAV may reflect certain portfolio securities’ fair values rather than their market prices. Fair value pricing involves subjective judgments and it is possible that the fair value determination for a security is materially different than the value that could be realized upon the sale of the security.

Availability of Information

The Distributor’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”),\(^4\) and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on the Distributor’s Web site the identities and quantities of the portfolio of securities and other assets (the “Disclosed Portfolio”) (as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund’s calculation of NAV at the end of the business day.\(^4\)

On a daily basis, the Disclosed Portfolio will include each portfolio security, including Senior Loans, and other financial instruments of the Fund with the following information on the Fund’s Web site: ticker symbol (if applicable), name by which the financial instrument is known, number of shares (if applicable) and dollar value of securities (including Senior Loans) and financial instruments held in the Fund, and percentage weighting of the security and financial instrument in the Fund. The Web site information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) 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, will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. In addition, during hours when the markets for less liquid assets 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 Intraday Indicative Value will be based on quotes and closing prices from the securities’ local market and may not reflect events that occur subsequent to the local market’s close. Premiums and discounts between the Intraday Indicative Value and the market price may occur. This should not be viewed as a “real-time” update of the NAV per Share of the Fund, which is calculated only once a day.

The dissemination of the Intraday Indicative Value, together with the

\(^4\) The Valuation Committee of the Trust’s Board of Trustees is responsible for the oversight of the pricing procedures of the Fund and the valuation of the Fund’s portfolio. The Valuation Committee has delegated day-to-day pricing responsibilities to the Adviser’s Pricing Committee, which is composed of officers of the Adviser. The Pricing Committee is responsible for the valuation and revaluation of any portfolio investments for which market prices are not readily available. The Fund has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding valuation and revaluation of any portfolio investments.

\(^4\) 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.

\(^4\) 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. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).
the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

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 of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the 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. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 3735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

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

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting 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; (2) the information contained in the Information Circular will also disclose that the Shares are non-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 the Fund. 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 Distributor’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 has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The equity securities in which the Fund may invest will be limited to securities that trade in markets that are members of the 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 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 agreement. In pursuing its investment objective, the Fund seeks to outperform the Primary and Secondary Indices by normally investing at least 80% of its net assets (plus any borrowings for investment purposes) in Senior Loans. It is anticipated that the Fund, in accordance with its principal investment strategy, will invest 50% to 75% of its net assets in Senior Loans that are eligible for inclusion in the liquiditiy thresholds of the Primary and/or the Secondary Indices. Each of the Fund’s Senior Loan investments will have no less than $250 million USD par outstanding. The Fund will not invest 25% or more of the value of its total assets in illiquid securities (calculated at the time of investment), including Rule 144A securities, junior subordinated loans and unsecured loans deemed illiquid by the Adviser. The Fund may also invest in (1) fixed-rate or floating-rate income-producing securities (including, without limitation, U.S. government debt securities, investment grade and below-investment grade corporate debt securities), (2) preferred securities, and (3) securities of other investment companies registered under the 1940 Act.50 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, paragraph (g) of Nasdaq Rule 5735 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. The Fund’s investments will be consistent with the Fund’s investment objectives and will not be used to enhance leverage. The Fund will not invest in options contracts, futures contracts or swap agreements. The Adviser represents that, under normal market conditions, the Fund would generally satisfy the generic fixed income listing requirements in Nasdaq Rule 5705(b)(4) on a continuous basis measured at the time of purchase, as described above. Except for Underlying ETFs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S. equity issues. The Primary Index Committee has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Primary Index. The Oversight Committee has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Secondary Index.

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. S&P and Markit are not broker-dealers or affiliated with a broker-dealer and each has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Primary Index and Secondary Index, respectively.

The Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service will be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on the Distributor’s 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 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 Nasdaq proprietary quote and trade services. Intra-day, executable price quotations of the Senior Loans, fixed-income securities and other assets held by the Fund will be available from either 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, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors.

The Distributor’s 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 Interactive 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 will facilitate the listing and trading of an additional type of actively-managed exchange-traded fund that will enhance competition among market...
participants, to the benefit of investors and the marketplace.

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

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–2013–036 on the subject line.

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


Public Reference Room

All submissions received or printed in the Commission's Public Reference Room will be available to 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 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 Nasdaq. 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–2013–036 and should be submitted on or before April 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.52
Kevin M. O’Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Inc. Fee Schedule To Increase the Gross FOCUS Fee

March 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) and Rule 19b–4 thereunder, notice is hereby given that, on February 26, 2013, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange’s Fee Schedule to increase the gross FOCUS fee (“Gross FOCUS Fee”). The text of the proposed rule change is available on the Exchange’s Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization 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 those 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 parts 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 amend its Fee Schedule to increase the Gross FOCUS Fee. The Exchange proposes to immediately reflect the proposed change in its Fee Schedule, but not to implement the proposed rate change until April 1, 2013.4

The Exchange currently charges each ETP Holder a monthly Gross FOCUS Fee of $0.07 per $1,000 of gross revenue reported on its FOCUS Report.5 The Exchange proposes to increase the rate of the Gross FOCUS Fee from $0.07 per $1,000 of gross revenue to $0.075 per $1,000 of gross revenue.6 The Exchange is proposing this increase in order to offset increased regulatory expenses. In this regard, the Exchange notes that it has not increased the Gross FOCUS Fee since June 2011.7

The Exchange allocates the funds collected pursuant to the Gross FOCUS Fee to fund the performance of its regulatory activities with respect to ETP participation.

4 The Exchange has proposed changes to the Fee Schedule, as reflected in the Exhibit 5 attached hereto, in a manner that would permit readers of the Fee Schedule to identify the proposed increase to the Gross FOCUS Fee that would be implemented on April 1, 2013.

5 FOCUS is an acronym for Financial and Operational Combined Uniform Single Report. FOCUS Reports are filed periodically with the Securities and Exchange Commission (the “Commission” or “SEC”) as SEC Form X–17A–5 pursuant to Rule 17a–5 under the Act.

6 The Exchange is also proposing to specify, as is the case today, that the Gross FOCUS Fee is charged monthly.
