IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–ICEEU–2013–11) be, and hereby is, approved.

For the Commission by delegation of authority.

Kevin M. O’Neill,
Deputy Secretary.

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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 Income Fund of First Trust Exchange-Traded Fund VI

September 20, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), and Rule 19b–4 thereunder, notice is hereby given that on September 12, 2013, 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 the Substance of the Proposed Rule Change

Nasdaq proposes to list and trade the shares of the First Trust High Income ETF (the “Fund”) of First Trust Exchange-Traded Fund VI (the “Trust”) under Nasdaq Rule 5735 ("Managed

positions and contemplates that porting would take up to 2 days following the default of a Clearing Member. After taking into account the porting period, the risk horizon for liquidation of customer CDS portfolios would be extended to 7 days. The increased liquidation period used in determining the initial margin requirement for customer CDS positions will only apply to the spread response, basis and interest rate risk components of the model.

The ICE Clear Europe CDS Risk Policy, the CDS Risk Model Description methodology document, CDS Back-Testing Framework and CDS Default Management Framework have been updated to account for the enhancements described above.

ICE Clear Europe believes that the amendments are consistent with the requirements of Section 17A of the Act and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22. In particular, ICE Clear Europe believes the amendments will enhance the clearinghouse’s margin methodology by more accurately addressing Specific Wrong-Way Risk presented by index CDS positions of Clearing Members. ICE Clear Europe further believes that the amendments will enhance the guaranty fund calculation methodology, and adjust the liquidation period for customer positions used in calculating initial margin for CDS. In ICE Clear Europe’s view, the amendments will therefore promote the prompt and accurate clearance and settlement of securities transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act. Furthermore, ICE Clear Europe believes the revisions will enhance ICE Clear Europe’s financial resources, consistent with the requirements of Rule 17Ad–22, by requiring additional initial margin and CDS Guaranty Fund contributions to address Specific Wrong-Way Risk.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and in general, to protect investors and the public interest.

After careful review, the Commission finds that the proposed rule change is consistent with Section 17A of the Act and the rules thereunder applicable to ICE Clear Europe. The Commission believes the proposed enhancements to ICE Clear Europe’s margin and guaranty fund methodologies are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible, and in general, to protect investors and the public interest.

Additionally, the proposed rule change would increase the liquidation period from 5 to 7 days for calculation of the spread response, basis, and interest rate risk components of initial margin for customer CDS positions to account for situations where porting of customer positions should fail during the 2-day period following the default of a Clearing Member.
Fund Shares”).


4 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, listed and traded 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.

5 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. The Trust is a series of the Trust.

6 First Trust Advisors L.P. will be the investment adviser (“Adviser”) to the Fund. First Trust Portfolios L.P. (the “Distributor”) will be the principal underwriter and distributor of the Fund’s Shares. Brown Brothers Harriman & Co. (“BBH”) will act as the administrator, accounting agent, custodian and transfer agent to the Fund.

7 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.

8 The term “under normal market 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 securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as system failure, natural disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. In periods of extreme market disturbance, the Fund may take temporary defensive positions by overweighting its portfolio in cash/cash-like instruments; however, to the extent possible, the Adviser could continue to seek to achieve the Fund’s investment objectives.
cash flow (in the form of premiums on the options) that may be distributed to shareholders on a monthly basis. The market value of the option strategy may be up to 20% of the Fund’s overall net asset value.

The equity securities in which the Fund will invest and the options which the Fund will write will be limited to U.S. exchange-traded securities and options, respectively, 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. A list of ISG members is available at www.isgportal.org.

The equity securities held by the Fund will be selected using a mathematical optimization process which attempts to tilt the Fund’s common stock portfolio toward higher dividend paying stocks. The equity securities held by the Fund may include non-U.S. securities that are listed on a U.S. securities exchange in the form of American Depositary Receipts (“ADRs”) and Global Depositary Receipts (“GDRs”) (collectively “Depository Receipts”). The equity securities will be periodically rebalanced.

The option portion of the portfolio will generally consist of U.S. exchange-traded covered calls or covered call spreads on the index written by the Fund. The call options written by the Fund will typically be a laddered portfolio of one week, one month, two months and three months, and will typically be written at-the-money to slightly out-of-the-money. A call option will give the holder the right to buy the Index at a predetermined strike price from the Fund. The notional value of calls written (including calls and call spreads written on the Index and/or other indexes as described in Other Investments below) will be generally between 25% and 75% of the overall Fund.

Other Investments

In addition to the option strategy described in Principal Investments, the Fund may invest up to 10% of the market value of its net assets in futures, options, options on futures, total return swaps, credit default swaps and forward contracts. The Fund may utilize such derivatives to enhance return, to hedge some of the risks of its investments in securities, as a substitute for a position in the underlying asset, to reduce transaction costs, to maintain full market exposure (which means to adjust the characteristics of its investments to more closely approximate those of the markets in which it invests), to manage cash flows or to preserve capital. In attempting to enhance returns and/or hedge risks, the Fund may buy or write U.S. exchange-traded options on single stocks included in the portfolio and/or on the Index and/or other equity indexes. The Fund may also write covered call spreads on the index and/or other equity indexes.

Under normal market conditions, the Fund may invest up to 10% of its net assets in short-term debt securities and cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings will vary and will depend 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 objectives. The Fund may adopt a defensive strategy when the Adviser believes 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 will not be 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. The Fund may only invest in commercial paper rated A–1 or higher by S&P Ratings, Prime-1 or higher by Moody’s or F2 or higher by Fitch.

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). 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. 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.

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

The Shares

The Fund will issue and redeem Shares only in Creation Units at the net asset value (“NAV”) next determined by the Adviser and will review and monitor the creditworthiness of such institutions. The Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

11 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).

12 The NAV of the Fund’s Shares generally will be calculated once daily on Monday through Friday as of the close of regular trading on the New York Stock Exchange (“NYSE”), generally 4:00 p.m. Eastern time (the “NAV Calculation Time”). NAV per Share will be calculated by dividing the Fund’s net assets by the number of Fund Shares.
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 NYSE, generally, 4:00 p.m. Eastern Time. 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 generally will consist of either (i) the in-kind deposit of a designated portfolio of securities (the “Deposit Securities”) per each Creation Unit and the Cash Component (defined below), computed as described below or (ii) the cash value of all or a portion of the Deposit Securities (“Deposit Cash”) and the “Cash Component,” as computed as described below. The Cash Component will serve the function of compensating for any difference between the NAV per Creation Unit and the market value of the Deposit Securities or Deposit Cash, as applicable.

To be eligible to place orders with respect to creations and redemptions of Creation Units, an entity must be (i) a “Participating Party,” i.e., a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (“NSCC”) or (ii) a Depository Trust Company (“DTC”) Participant (a “DTC Participant”). In addition, each Participating Party or DTC Participant (each, an “Authorized Participant”) must execute an agreement that has been agreed to by the Distributor and BBH with respect to purchases and redemptions of Creation Units.

BBH, through the NSCC, will make available on each business day, immediately prior to the opening of business on the Exchange’s Regular Market Session (currently 9:30 a.m. Eastern time), the list of the names and the required number of shares of each Deposit Security and/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, subject to any relevant adjustments, will be applicable in order to effect purchases of Creation Units of the Fund until such time as the next announced composition of the Deposit Securities and/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 BBH and only on a business day.

With respect to the Fund, BBH, through the NSCC, will make available immediately prior to the opening of business on the Exchange (9:30 a.m. Eastern time) on each business day, the list of the names and share quantities of the Fund’s portfolio securities (“Fund Securities”) and/or, if relevant, the required cash value thereof that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Fund Securities will be valued by using market valuations. A market valuation generally means a valuation (i) obtained from an independent pricing service or a major exchange, a pricing service, or a major broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (“NSCC”) or (ii) a Depository Trust Company (“DTC”) Participant (a “DTC Participant”). In addition, each Participating Party or DTC Participant (each, an “Authorized Participant”) must execute an agreement that has been agreed to by the Distributor and BBH with respect to purchases and redemptions of Creation Units.

The creation/redemption order cut off time for the Fund is expected to be 4:00 p.m. Eastern time for purchases of Shares. On days when the Exchange closes earlier than normal and in the case of custom orders, 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, will be accrued daily and taken into account for purposes of determining NAV. The NAV of the Fund will be calculated by BBH and determined at the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. Eastern time) on each day that such exchange is open. 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).

Portfolio securities listed on any exchange other than the Exchange will be valued at the last sale price on the business day as of which such value is being determined. Securities listed on the Exchange will be valued at the official closing price on the business day as of which such value is being determined. For information regarding the valuation of Fund investments in calculating the NAV of the Shares, see Registration Statement.
determined. If there has been no sale on such day, or no official closing price in the case of securities traded on the Exchange, the securities will be valued at the mean of the most recent bid and ask prices on such day. Portfolio securities traded on more than one securities exchange will be valued at the last sale price or official closing price, as applicable, on the business day as of which such value is being determined at the close of the exchange representing the principal market for such securities. U.S. exchange-traded options and futures contracts will be valued at the closing price in the market where such contracts are principally traded. Credit default swaps will be valued using a pricing service or, if the pricing service does not provide a value, the Adviser’s Pricing Committee will attempt to obtain one or more quotes provided by the selling dealer or financial institution and will value the swaps accordingly. Except as otherwise provided herein, portfolio instruments traded in the over-the-counter market will be valued at their closing bid prices.

The Adviser may use various pricing services, or discontinue the use of any pricing service, as approved by the Trust 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. 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. 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.fipportfolios.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”), 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 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. On a daily basis, the Disclosed Portfolio will include each portfolio security and other financial instruments of the Fund with the following information on the Fund’s Web site: Ticker symbol (if applicable), name of security and financial instrument, number of shares (if applicable) and dollar value of securities 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 and broadly displayed at least every 15 seconds during the Regular Market Session. 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 Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day. Intra-day, executable price quotations on the securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day price information will also be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors.

In addition, a basket composition file, which includes the security names, amounts and share quantities, as applicable, required to be delivered in exchange for the Fund’s Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening.

13 The Valuation Committee of the Trust Board will be 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 will be composed of officers of the Adviser. The Pricing Committee will be responsible for the valuation and revaluation of any portfolio investments for which market quotations or 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.

14 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 such Fund’s NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

15 See Nasdaq Rule 4120(b)(4) describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 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. or 4:15 p.m. to 8 p.m. Eastern time.

16 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+1”). 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 on such 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.

17 Currently, the NASDAQ OMX Global Index Data Service (“GIS”) 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. GIS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETPs, or third-party partner indexes and ETPs.
of Nasdaq via NSCC. The basket will represent one Creation Unit of the Fund. Investors will also be able to obtain the Fund’s Statement of Additional Information (“SAI”), the Fund’s annual and semi-annual reports (together, “Shareholder Reports”), and its Form N–CSR and Form N–SAR, filed twice a year. The Fund’s SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission’s Web site at www.sec.gov. Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

The Exchange represents that, for initial and/or continued listing criteria applicable to the Fund, Nasdaq will halt or pause trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). 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 constituting 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 4:00 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
The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The 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, in the equity securities in which the Fund will invest, and in the U.S. exchange-traded options which the Fund will buy or write with other markets and other entities that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

FINRA may obtain trading information regarding trading in the Shares and in such equity securities and U.S. exchange-traded options from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and in such equity securities and U.S. exchange-traded options from markets and other entities 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 (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, 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 in the Registration Statement. The

The Fund will also utilize an option strategy consisting of writing U.S. exchange-traded covered call options on the Index. The market value of the option strategy may be up to 20% of the Fund’s overall net asset value. In addition to such option strategy, the Fund may invest no more than 10% of the market value of its net assets in futures, options, options on futures, total return swaps, credit default swaps and forward contracts. In attempting to enhance returns and/or hedge risks, the Fund may buy or write U.S. exchange-traded options on single stocks included in the portfolio and/or on the Index and/or other equity indexes. The Fund may also write covered call spreads on the Index and/or other equity indexes.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of acquisition). 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.

The Adviser is not a broker-dealer, but is affiliated with a broker-dealer, and has implemented a “fire wall” with respect to its broker-dealer affiliate 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 proposed rule change is designed to promote just and equitable principles of trade, to foster and protect competition in securities and options, respectively, that are limited to U.S. exchange-traded securities and options, respectively, that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges and certain foreign exchanges to enter into 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.

Under normal circumstances, the Fund will invest primarily in large cap U.S. exchange-traded equity securities.


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 will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. 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 also be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares and any underlying exchange-traded products. Intra-day, executable price quotations of the securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, if applicable. Intra-day price information will also be 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 or paused under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted 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

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-2013–122 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–2013–122. 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 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 such 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–2013–122, and should be submitted on or before October 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.23

Kevin M. O’Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]


September 24, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AcuNetx, Inc. because it has not filed any periodic reports since the period ended June 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Alliance Pharmaceutical Corp. because it has not filed any periodic reports since the period ended March 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BBV Vietnam S.E.A. Acquisition Corp. because it has not filed any periodic reports since the period ended December 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cash Technologies, Inc. because it has not filed any periodic reports since the period ended February 28, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Conspiracy Entertainment Holdings, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Dematco, Inc. because it has not filed any periodic reports since the period ended August 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Interactive Systems Worldwide, Inc. because it has not filed any periodic reports since the period ended March 31, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed...