

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 70	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2015 - * 161	Amendment No. (req. for Amendments *)
Filing by NASDAQ Stock Market Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>		Section 806(e)(2) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
<b>Description</b>				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="A proposed rule change to list and trade the shares under Nasdaq Rule 5735."/>				
<b>Contact Information</b>				
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.				
First Name * <input type="text" value="Jonathan"/>		Last Name * <input type="text" value="Cayne"/>		
Title * <input type="text" value="Senior Associate General Counsel"/>				
E-mail * <input type="text" value="jonathan.cayne@nasdaq.com"/>				
Telephone * <input type="text" value="(301) 978-8493"/>		Fax <input type="text" value="(301) 978-8472"/>		
<b>Signature</b>				
Pursuant to the requirements of the Securities Exchange Act of 1934,				
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.				
(Title *)				
Date	<input type="text" value="12/22/2015"/>			
By	<input type="text" value="Edward S. Knight"/>			
(Name *)		<input type="text" value="Executive Vice President and General Counsel"/>		
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.				
<input type="button" value="edward.knight@nasdaq.com"/>				

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to list and trade the shares of the following under Nasdaq Rule 5735 (“Managed Fund Shares”)<sup>3</sup>: First Trust RiverFront Dynamic Europe ETF (the “Europe Fund”); First Trust RiverFront Dynamic Asia Pacific ETF (the “Asia Pacific Fund”); First Trust RiverFront Dynamic Emerging Markets ETF (the “Emerging Markets Fund”); and First Trust RiverFront Dynamic Developed International ETF (the “Developed International Fund”). The Europe Fund, Asia Pacific Fund, Emerging Markets Fund and Developed International Fund are each a “Fund” and collectively, the “Funds.” Each Fund is a series of First Trust Exchange-Traded Fund III (the “Trust”). The shares of each Fund are collectively referred to herein as the “Shares.”

(b) and (c) Not applicable.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR-NASDAQ-2008-039). There are already multiple actively managed funds listed on the Exchange; see, e.g., Securities Exchange Act Release Nos. 72506 (July 1, 2014), 79 FR 38631 (July 8, 2014) (SR-NASDAQ-2014-050) (order approving listing and trading of First Trust Strategic Income ETF); 69464 (April 26, 2013), 78 FR 25774 (May 2, 2013) (SR-NASDAQ-2013-036) (order approving listing and trading of First Trust Senior Loan Fund); and 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR-NASDAQ-2012-004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on July 1, 2015. Exchange staff will advise the Board of Directors of the Exchange of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the rule change.

Questions regarding this rule filing may be directed to Jonathan F. Cayne, Senior Associate General Counsel, Nasdaq, Inc. at (301) 978-8493 (telephone).

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

a. Purpose

The Exchange proposes to list and trade the Shares of each Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares<sup>4</sup> on the Exchange. Each 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 January 9, 2008.<sup>5</sup> The Trust is registered with the Commission as an investment

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<sup>4</sup> 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.

company and has filed a registration statement on Form N-1A (“Registration Statement”) with the Commission.<sup>6</sup> Each Fund will be a series of the Trust.

First Trust Advisors L.P. will be the investment adviser (“Adviser”) to the Funds. RiverFront Investment Group, LLC will serve as investment sub-adviser (“Sub-Adviser”) to the Funds and provide day-to-day portfolio management. First Trust Portfolios L.P. (the “Distributor”) will be the principal underwriter and distributor of each Fund’s Shares. Brown Brothers Harriman & Co. (“BBH”) will act as the administrator, accounting agent, custodian and transfer agent to the Funds.

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.<sup>7</sup> In addition, paragraph (g) further

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<sup>5</sup> The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 28468 (October 27, 2008) (File No. 812-13477) (the “Exemptive Relief”).

<sup>6</sup> See Post-Effective Amendment No. 29 to Registration Statement on Form N-1A for the Trust, dated November 19, 2015 (File Nos. 333-176976 and 811-22245). The descriptions of the Funds and the Shares contained herein are based, in part, on information in the Registration Statement.

<sup>7</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser, the Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent

requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Adviser nor the Sub-Adviser is a broker-dealer, although the Adviser is affiliated with the Distributor, a broker-dealer, and the Sub-Adviser is affiliated with Robert W. Baird & Co. Incorporated, a broker-dealer, and each has implemented a fire wall with respect to its respective broker-dealer affiliate regarding access to information concerning the composition and/or changes to a portfolio.

In addition, personnel who make decisions on each Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such Fund's portfolio. In the event (a) the Adviser or the Sub-Adviser registers as a broker-dealer, or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement a fire wall with respect

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with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to a portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Each Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

#### Principal Investment Strategies Applicable to Each Fund

Each Fund's investment objective will be to provide capital appreciation. Under normal market conditions,<sup>8</sup> each Fund will seek to achieve its investment objective by investing at least 80% of its net assets (including investment borrowings) in a combination of (i) "Principal Fund Equity Securities" (as defined below), (ii) forward currency contracts and non-deliverable forward currency contracts<sup>9</sup> (collectively, "Forward Contracts"), and (iii) currency transactions on a spot (i.e., cash) basis.<sup>10</sup>

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<sup>8</sup> 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 systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. On a temporary basis, including for defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, a Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, a Fund may not be able to achieve its investment objective. A Fund may adopt a defensive strategy when the Adviser and/or the Sub-Adviser believes securities in which such Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

<sup>9</sup> A non-deliverable forward currency contract is a forward currency contract where there is no physical settlement of the two currencies at maturity. Instead, a net

For each Fund, (a) “Principal Equity Securities” will consist of the following U.S. and non-U.S. exchange-listed securities: (i) common stocks; (ii) common and preferred shares of real estate investment trusts (“REITs”);<sup>11</sup> and (iii) American Depositary Receipts (“ADRs”), European Depositary Receipts (“EDRs”), and Global Depositary Receipts (“GDRs” and, together with ADRs and EDRs, “Depositary Receipts”<sup>12</sup>), and (b) “Principal Fund Equity Securities” will consist of Principal Equity Securities that are suggested by such Fund’s name.<sup>13</sup> Accordingly:

(i) for the Europe Fund, Principal Fund Equity Securities will be Principal Equity Securities of European companies;<sup>14</sup>

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- cash payment is made by one party to another based on the movement of the two currencies.
- 10 A Fund would enter into Forward Contracts and/or currency spot transactions for hedging purposes.
- 11 A REIT is a company that owns and typically operates income-producing real estate or related assets.
- 12 Depositary Receipts are receipts, typically issued by a bank or trust company, which evidence ownership of underlying securities issued by a foreign entity. The Funds will not invest in any unsponsored Depositary Receipts.
- 13 For the avoidance of doubt, with respect to Depositary Receipts, whether such Principal Equity Securities are Principal Fund Equity Securities is based on the underlying securities, the ownership of which is represented by the Depositary Receipts (i.e., whether, as described below, the relevant underlying security is a security of a European company, an Asian Pacific company, an emerging market company or a developed market company, as applicable).
- 14 European companies are those companies (i) whose securities are traded principally on a stock exchange in a European country, (ii) that are organized under the laws of or have a principal office in a European country, or (iii) that have at least 50% of their assets in, or derive at least 50% of their revenues or profits from, a European country.

(ii) for the Asia Pacific Fund, Principal Fund Equity Securities will be Principal Equity Securities of Asian Pacific companies;<sup>15</sup>

(iii) for the Emerging Markets Fund, Principal Fund Equity Securities will be Principal Equity Securities of emerging market companies;<sup>16</sup> and

(iv) for the Developed International Fund, Principal Fund Equity Securities will be Principal Equity Securities of developed market companies.<sup>17</sup>

In selecting securities for a Fund, the Sub-Adviser will score individual securities from a portfolio of eligible securities according to several core attributes, including, but not limited to, value, quality and momentum, using multiple proprietary factors within each core attribute.<sup>18</sup> The Sub-Adviser will then rank each qualifying security based on its core attribute score, and the highest scoring securities will be considered for inclusion

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15 Asian Pacific companies are those companies (i) whose securities are traded principally on a stock exchange in an Asian Pacific country, (ii) that are organized under the laws of or have a principal office in an Asian Pacific country, or (iii) that have at least 50% of their assets in, or derive at least 50% of their revenues or profits from, an Asian Pacific country.

16 An emerging market company is one (i) domiciled or with a principal place of business or primary securities trading market in an emerging market country, or (ii) that derives a substantial portion of its total revenues or profits from emerging market countries.

17 Developed market companies are those companies (i) whose securities are traded principally on a stock exchange in a developed market country, (ii) that are organized under the laws of or have a principal office in a developed market country, or (iii) that have at least 50% of their assets in, or derive at least 50% of their revenues or profits from, a developed market country.

18 An example of a value factor would be price-to-book value and an example of a quality factor would be cash as a percentage of market capitalization.

in the Fund's portfolio. The Sub-Adviser will utilize its proprietary optimization process to maximize the percentage of high-scoring securities included in each Fund's portfolio.

In addition, for each Fund, by entering into Forward Contracts and currency spot transactions, the Sub-Adviser will deploy a dynamic currency hedge (hedging up to 100% of such Fund's foreign currency exposure) based on its proprietary hedging methodology. The Sub-Adviser's hedging methodology will be constructed from a combination of quantitative measures, such as interest-rate differentials, central bank balance sheet expansion/contraction, and price momentum, and qualitative measures, such as formal and informal guidance from central bankers. Each Fund will only enter into transactions in Forward Contracts with counterparties that the Adviser and/or the Sub-Adviser reasonably believe are capable of performing under the applicable Forward Contract.<sup>19</sup>

#### Other Investments for the Funds

Each Fund may invest (in the aggregate) up to 20% of its net assets in the following securities and instruments:

Each Fund may invest in the following U.S. and non-U.S. exchange-listed securities (other than Principal Fund Equity Securities): (i) common stocks; (ii) common

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<sup>19</sup> Each Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser and/or the Sub-Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser's and/or Sub-Adviser's analysis will evaluate each approved counterparty using various methods of analysis and may consider the Adviser's and/or Sub-Adviser's past experience with the counterparty, its known disciplinary history and its share of market participation.

and preferred shares of REITs; (iii) Depositary Receipts; and (iv) equity securities of business development companies (“BDCs”) (collectively, “Other Equity Securities”).<sup>20</sup>

Each Fund may invest in short-term debt securities and other short-term debt instruments (described below), as well as cash equivalents, or it may hold cash. The percentage of each Fund invested in such holdings or held in cash will vary and will depend on several factors, including market conditions. Each Fund may invest in the following short-term debt instruments:<sup>21</sup> (1) fixed rate and floating rate U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by 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,<sup>22</sup> which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a

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<sup>20</sup> For each Fund, Other Equity Securities and Principal Fund Equity Securities are referred to collectively as “Equity Securities.”

<sup>21</sup> Short-term debt instruments will be issued by issuers having a long-term debt rating of at least A by Standard & Poor’s Ratings Services, a Division of The McGraw-Hill Companies, Inc. (“S&P Ratings”), Moody’s Investors Service, Inc. (“Moody’s”) or Fitch Ratings (“Fitch”) and have a maturity of one year or less.

<sup>22</sup> Each Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser and/or the Sub-Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust (“Trust Board”). The Adviser and/or the Sub-Adviser will review and monitor the creditworthiness of such institutions. The Adviser and/or the Sub-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. The Funds will not enter into reverse repurchase agreements.

fixed rate of interest; (6) commercial paper, which is short-term unsecured promissory notes;<sup>23</sup> and (7) short-term debt obligations issued or guaranteed by non-U.S. governments or by their agencies or instrumentalities.

Each Fund may invest (but only up to 5% of its net assets) in exchange-listed equity index futures contracts.

#### The Funds' Equity Securities

Under normal market conditions, each Fund will invest in at least 20 Equity Securities. Each Fund will satisfy the "ISG Criteria" (as described below) and/or the "Alternative Criteria" (as described below).

A Fund will satisfy the ISG Criteria if at least 90% of such Fund's net assets that are invested (in the aggregate) in Equity Securities will be invested in Equity Securities that trade in markets that are members of the Intermarket Surveillance Group ("ISG")<sup>24</sup> or are parties to a comprehensive surveillance sharing agreement with the Exchange.

A Fund will satisfy the Alternative Criteria if, under normal market conditions, its Equity Securities meet the following criteria at the time of purchase: (1) non-U.S. Equity Securities<sup>25</sup> each shall have a minimum market value of at least \$100 million; (2) non-U.S. Equity Securities each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000,

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<sup>23</sup> Each Fund may only invest in commercial paper rated A-1 or higher by S&P Ratings, Prime-1 or higher by Moody's or F1 or higher by Fitch.

<sup>24</sup> See note 41, *infra*.

<sup>25</sup> For purposes of this filing, the term "non-U.S. Equity Securities" means Equity Securities that are not listed on a U.S. exchange.

averaged over the last six months; (3) the most heavily weighted non-U.S. Equity Security shall not exceed 25% of the weight of the Fund's entire portfolio and, to the extent applicable, the five most heavily weighted non-U.S. Equity Securities shall not exceed 60% of the weight of the Fund's entire portfolio; (4) each non-U.S. Equity Security shall be listed and traded on an exchange that has last-sale reporting; and (5) all of such Fund's net assets that are invested (in the aggregate) in Equity Securities other than non-U.S. Equity Securities shall be invested in Equity Securities that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.<sup>26</sup>

The Funds' Transactions in Forward Contracts and Exchange-Listed Equity Index Futures Contracts

Each Fund's transactions in Forward Contracts and exchange-listed equity index futures contracts will be consistent with its investment objective and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of an index. Each Fund

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<sup>26</sup> Criteria (1) through (4) are similar to certain "generic" listing criteria in Nasdaq Rule 5705(b)(3)(A)(ii), which relate to criteria applicable to an index or portfolio of (a) non-U.S. stocks or (b) both U.S. and non-U.S. stocks underlying a series of Index Fund Shares to be listed and traded on the Exchange pursuant to Rule 19b-4(e) under the Act. In addition, the Commission recently issued an order approving a proposed rule change relating to the listing and trading under NYSE Arca Equities Rule 8.600 based, in part, on a representation that the non-U.S. equity securities in the applicable ETF's portfolio would meet criteria similar to certain "generic" listing criteria in NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(B), which relate to criteria applicable to an index or portfolio of (a) non-U.S. stocks or (b) both U.S. and non-U.S. stocks underlying a series of Investment Company Units to be listed and traded on NYSE Arca, Inc. pursuant to Rule 19b-4(e) under the Act. See Securities Exchange Act Release No. 75023 (May 21, 2015), 80 F.R. 30519 (May 28, 2015) (SR-NYSEArca-2014-100) (order approving listing and trading of SPDR SSGA Global Managed Volatility ETF).

will comply with the regulatory requirements of the Commission with respect to coverage in connection with its transactions in Forward Contracts and exchange-listed equity index futures contracts. If the applicable guidelines prescribed under the 1940 Act so require, a Fund will earmark cash, U.S. government securities and/or other liquid assets permitted by the Commission in the amount prescribed.<sup>27</sup>

#### Investment Restrictions

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), deemed illiquid by the Adviser and/or the Sub-Adviser.<sup>28</sup> Each 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 such Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that

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<sup>27</sup> With respect to guidance under the 1940 Act, see 15 U.S.C. 80a-18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); Dreyfus Strategic Investing, Commission No-Action Letter (June 22, 1987); Merrill Lynch Asset Management, L.P., Commission No-Action Letter (July 2, 1996).

<sup>28</sup> In reaching liquidity decisions, the Adviser and/or the Sub-Adviser may consider the following factors: the frequency of trades and quotes for the security or other instrument; the number of dealers wishing to purchase or sell the security or other instrument and the number of other potential purchasers; dealer undertakings to make a market in the security or other instrument; and the nature of the security or other instrument and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security or other instrument, the method of soliciting offers and the mechanics of transfer).

lack readily available markets as determined in accordance with Commission staff guidance.<sup>29</sup>

The Funds may not invest 25% or more of the value of their respective total assets in securities of issuers in any one industry. This restriction does not apply to (a) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities or (b) securities of other investment companies.<sup>30</sup>

#### Creation and Redemption of Shares

Each Fund will issue and redeem Shares on a continuous basis at net asset value (“NAV”)<sup>31</sup> only in large blocks of Shares (“Creation Units”) in transactions with

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<sup>29</sup> 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 and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding “Restricted Securities”); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund’s portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

<sup>30</sup> 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).

<sup>31</sup> The NAV of each Fund’s Shares generally will be calculated once daily 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 a Fund’s net assets by the number of Fund Shares outstanding.

authorized participants, generally including broker-dealers and large institutional investors (“Authorized Participants”). Creation Units generally will consist of 50,000 Shares, although this may change from time to time. Creation Units, however, are not expected to consist of less than 50,000 Shares. The Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of securities and/or cash in lieu of such securities (the “Creation Basket”).<sup>32</sup> In addition, if there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying securities with the lower value will pay to the other an amount in cash equal to the difference (referred to as the “Cash Component”).

Creations and redemptions must be made by or through an Authorized Participant that has executed an agreement that has been agreed to by the Distributor and BBH with respect to creations and redemptions of Creation Units. All standard orders to create Creation Units must be received by the transfer agent no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., Eastern Time) (the “Closing Time”) in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt not later than the Closing Time of a redemption request in proper form by a Fund through the transfer agent and only on a business day.

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<sup>32</sup> It is expected that each Fund will typically issue and redeem Creation Units on an in-kind basis; however, subject to, and in accordance with, the provisions of the Exemptive Relief, a Fund may, at times, issue and redeem Creation Units on a cash (or partially cash) basis.

The Funds' custodian, through the National Securities Clearing Corporation, will make available on each business day, prior to the opening of business of the Exchange, the list of the names and quantities of the securities comprising the Creation Basket, as well as the estimated Cash Component (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day prior to commencement of trading in the Shares.

#### Net Asset Value

Each Fund's NAV will be determined as of the close of regular trading on the NYSE on each day the NYSE is open for trading. If the NYSE closes early on a valuation day, the NAV will be determined as of that time. NAV per Share will be calculated for each Fund by taking the value of such Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, including accrued expenses and dividends declared but unpaid, and dividing such amount by the total number of Shares outstanding. The result, rounded to the nearest cent, will be the NAV per Share. All valuations will be subject to review by the Trust Board or its delegate.

The Funds' investments will be valued daily. As described more specifically below, investments traded on an exchange (i.e., a regulated market), will generally be valued at market value prices that represent last sale or official closing prices. In addition, as described more specifically below, non-exchange traded investments will generally be valued using prices obtained from third-party pricing services (each, a "Pricing Service").<sup>33</sup> If, however, valuations for any of the Funds' investments cannot be

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<sup>33</sup> The Adviser may use various Pricing Services or discontinue the use of any Pricing Services, as approved by the Trust Board from time to time.

readily obtained as provided in the preceding manner, or the Pricing Committee of the Adviser (the “Pricing Committee”)<sup>34</sup> questions the accuracy or reliability of valuations that are so obtained, such investments will be valued at fair value, as determined by the Pricing Committee, in accordance with valuation procedures (which may be revised from time to time) adopted by the Trust Board (the “Valuation Procedures”), and in accordance with provisions of the 1940 Act. The Pricing Committee’s fair value determinations may require subjective judgments about the value of an investment. The fair valuations attempt to estimate the value at which an investment could be sold at the time of pricing, although actual sales could result in price differences, which could be material. Valuing the Fund’s investments using fair value pricing can result in using prices for those investments (particularly investments that trade in foreign markets) that may differ from current market valuations.

Certain securities in which a Fund may invest will not be listed on any securities exchange or board of trade. Such securities will typically be bought and sold by institutional investors in individually negotiated private transactions that function in many respects like an over-the-counter secondary market, although typically no formal market makers will exist. Certain securities, particularly debt securities, will have few or no trades, or trade infrequently, and information regarding a specific security may not be widely available or may be incomplete. Accordingly, determinations of the value of debt securities may be based on infrequent and dated information. Because there is less

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<sup>34</sup> The Pricing Committee will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding each Fund’s portfolio.

reliable, objective data available, elements of judgment may play a greater role in valuation of debt securities than for other types of securities.

The information summarized below is based on the Valuation Procedures as currently in effect; however, as noted above, the Valuation Procedures are amended from time to time and, therefore, such information is subject to change.

The following investments will typically be valued using information provided by a Pricing Service: (a) except as provided below, short-term U.S. government securities, commercial paper, bankers' acceptances and short-term debt obligations issued or guaranteed by non-U.S. governments or by their agencies or instrumentalities, all as set forth under "Other Investments for the Funds" (collectively, "Short-Term Debt Instruments") and (b) currency spot transactions. Debt instruments may be valued at evaluated mean prices, as provided by Pricing Services. Pricing Services typically value non-exchange-traded instruments utilizing a range of market-based inputs and assumptions, including readily available market quotations obtained from broker-dealers making markets in such instruments, cash flows, and transactions for comparable instruments. In pricing certain instruments, the Pricing Services may consider information about an instrument's issuer or market activity provided by the Adviser and/or the Sub-Adviser.

Short-Term Debt Instruments having a remaining maturity of 60 days or less when purchased will typically be valued at cost adjusted for amortization of premiums and accretion of discounts, provided the Pricing Committee has determined that the use of amortized cost is an appropriate reflection of value given market and issuer-specific conditions existing at the time of the determination.

Repurchase agreements will typically be valued as follows:

Overnight repurchase agreements will be valued at amortized cost when it represents the best estimate of value. Term repurchase agreements (i.e., those whose maturity exceeds seven days) will be valued at the average of the bid quotations obtained daily from at least two recognized dealers.

Certificates of deposit and bank time deposits will typically be valued at cost.

Equity Securities that are listed on any exchange other than the Exchange and the London Stock Exchange Alternative Investment Market (“AIM”) will typically be valued at the last sale price on the exchange on which they are principally traded on the business day as of which such value is being determined. Equity Securities listed on the Exchange or the AIM will typically be valued at the official closing price on the business day as of which such value is being determined. If there has been no sale on such day, or no official closing price in the case of securities traded on the Exchange or the AIM, such securities will typically be valued using fair value pricing. Equity 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.

Exchange-listed equity index futures contracts will typically be valued at the closing price in the market where such instruments are principally traded.

Forward Contracts will typically be valued at the current day’s interpolated foreign exchange rate, as calculated using the current day’s spot rate, and the thirty, sixty, ninety and one-hundred-eighty day forward rates provided by a Pricing Service or by certain independent dealers in such contracts.

Because foreign exchanges may be open on different days than the days during which an investor may purchase or sell Shares, the value of the Funds' assets may change on days when investors are not able to purchase or sell Shares. Assets denominated in foreign currencies will be translated into U.S. dollars at the exchange rate of such currencies against the U.S. dollar as provided by a Pricing Service. The value of assets denominated in foreign currencies will be converted into U.S. dollars at the exchange rates in effect at the time of valuation.

#### Availability of Information

The Funds' website ([www.ftportfolios.com](http://www.ftportfolios.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. The website will include the Shares' ticker, CUSIP and exchange information along with additional quantitative information updated on a daily basis, including, for each Fund: (1) daily trading volume, the prior business day's reported NAV and closing price, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>35</sup> 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

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<sup>35</sup> The Bid/Ask Price of each Fund will be determined using the mid-point 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 each Fund and its service providers.

business day, before commencement of trading in Shares in the Regular Market Session<sup>36</sup> on the Exchange, each Fund will disclose on its website 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.<sup>37</sup>

Each Fund’s disclosure of derivative positions in the Disclosed Portfolio will include sufficient information for market participants to use to value these positions intraday. On a daily basis, each Fund will disclose on its website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and percentage weighting of the holding in the Fund’s portfolio. The website information will be publicly available at no charge.

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<sup>36</sup> 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).

<sup>37</sup> Under accounting procedures to be followed by the Funds, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Accordingly, a 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.

In addition, for each 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 Disclosed Portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,<sup>38</sup> 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. 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 a 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 a Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Investors will also be able to obtain each Fund’s Statement of Additional Information (“SAI”), annual and semi-annual reports (together, “Shareholder Reports”), and Form N-CSR and Form N-SAR, filed twice a year. Each Fund’s SAI and

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<sup>38</sup> Currently, the NASDAQ OMX Global Index Data Service (“GIDS”) is the Nasdaq global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade Nasdaq indexes, listed ETFs, or third-party partner indexes and ETFs.

Shareholder Reports will be available free upon request from such Fund, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's website at [www.sec.gov](http://www.sec.gov). 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. 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. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association ("CTA") plans for the Shares. Quotation and last sale information for the Equity Securities (to the extent traded on a U.S. exchange) will be available from the exchanges on which they are traded as well as in accordance with any applicable CTA plans.

Pricing information for Short-Term Debt Instruments, repurchase agreements, Forward Contracts, bank time deposits, certificates of deposit and currency spot transactions will be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services. Pricing information for exchange-listed equity index futures contracts and non-U.S. Equity Securities will be available from the applicable listing exchange and from major market data vendors.

#### 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 continued listing, each Fund must be in compliance with Rule 10A-3<sup>39</sup> 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 a Fund. Nasdaq will halt 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 other assets constituting the Disclosed Portfolio of a 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 a 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.

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<sup>39</sup> See 17 CFR 240.10A-3.

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.<sup>40</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

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 and certain of the Equity Securities and exchange-listed equity index futures contracts held by the Funds with other markets and other entities that are members of

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<sup>40</sup> FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

ISG,<sup>41</sup> and FINRA may obtain trading information regarding trading in the Shares and such securities and instruments held by the Funds from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and certain of the Equity Securities and exchange-listed equity index futures contracts held by the Funds from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

For each Fund, at least 90% of such Fund's net assets that are invested (in the aggregate) in exchange-listed equity index futures contracts will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

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 for each Fund will discuss the following:

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<sup>41</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio for a Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(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 and the Disclosed Portfolio 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. 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 for each Fund will reference that such Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular for each Fund will also disclose the trading hours of the Shares of such Fund and the applicable NAV Calculation Time for the Shares. The Information Circular for each Fund will disclose that information about the Shares of such Fund will be publicly available on such Fund's website.

b. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating

transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The 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 represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

Neither the Adviser nor the Sub-Adviser is a broker-dealer, but each is affiliated with a broker-dealer, and is required to implement a “fire wall” with respect to its respective broker-dealer affiliate regarding access to information concerning the composition and/or changes to each 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.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and certain of the Equity Securities and exchange-listed equity index futures contracts held by the Funds with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and such securities and instruments held by the Funds from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and

certain of the Equity Securities and exchange-listed equity index futures contracts held by the Funds from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's TRACE. For each Fund, at least 90% of such Fund's net assets that are invested (in the aggregate) in exchange-listed equity index futures contracts will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. Under normal market conditions, each Fund will invest in at least 20 Equity Securities. Moreover, each Fund will satisfy the ISG Criteria and/or the Alternative Criteria.

The investment objective of each Fund will be to provide capital appreciation. Under normal market conditions, each Fund will seek to achieve its investment objective by investing at least 80% of its net assets (including investment borrowings) in Principal Fund Equity Securities, Forward Contracts and currency transactions entered into on a spot (i.e., cash) basis. Each Fund may also invest up to 5% of its net assets in exchange-listed equity index futures contracts. Each Fund's transactions in Forward Contracts and exchange-listed equity index futures contracts will be consistent with its investment objective and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of an index. Each Fund will comply with the regulatory requirements of the Commission with respect to coverage in connection with its transactions in Forward Contracts and exchange-listed equity index futures contracts. If the applicable guidelines

prescribed under the 1940 Act so require, a Fund will earmark cash, U.S. government securities and/or other liquid assets permitted by the Commission in the amount prescribed. Also, each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), deemed illiquid by the Adviser and/or the Sub-Adviser. Each 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 assets. Illiquid assets 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 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 Funds and the Shares, thereby promoting market transparency. Moreover, 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, each Fund will disclose on its website the

Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. 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, as well as in accordance with the Unlisted Trading Privileges and the CTA plans for the Shares. Quotation and last sale information for the Equity Securities (to the extent traded on a U.S. exchange) will be available from the exchanges on which they are traded as well as in accordance with any applicable CTA plans.

Pricing information for Short-Term Debt Instruments, repurchase agreements, Forward Contracts, bank time deposits, certificates of deposit and currency spot transactions will be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services. Pricing information for exchange-listed equity index futures contracts and non-U.S. Equity Securities will be available from the applicable listing exchange and from major market data vendors.

Each Fund's website will include a form of the prospectus for such Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Funds will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 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 a Fund may be halted. In addition, as noted above, investors will have ready

access to information regarding each Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Each Fund's investments will be valued daily. Investments traded on an exchange (i.e., a regulated market), will generally be valued at market value prices that represent last sale or official closing prices. Non-exchange traded investments will generally be valued using prices obtained from a Pricing Service. If, however, valuations for any of the Funds' investments cannot be readily obtained as provided in the preceding manner, or the Pricing Committee questions the accuracy or reliability of valuations that are so obtained, such investments will be valued at fair value, as determined by the Pricing Committee, in accordance with the Valuation Procedures and in accordance with provisions of the 1940 Act.

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 additional types of actively managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and certain of the Equity Securities and exchange-listed equity index futures contracts held by the Funds with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and such securities and instruments held by the Funds from such markets and other entities.

In addition, the Exchange may obtain information regarding trading in the Shares and certain of the Equity Securities and exchange-listed equity index futures contracts

held by the Funds from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's TRACE. Furthermore, as noted above, investors will have ready access to information regarding the Funds' holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares. For each Fund, at least 90% of such Fund's net assets that are invested (in the aggregate) in exchange-listed equity index futures contracts will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. Under normal market conditions, each Fund will invest in at least 20 Equity Securities. Moreover, each Fund will satisfy the ISG Criteria and/or the Alternative Criteria.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

4. 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 additional types of actively managed exchange-traded funds that will enhance competition among market participants, to the benefit of investors and the marketplace.

5. 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.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

**EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NASDAQ-2015-161)

December \_\_, 2015

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 RiverFront Dynamic Europe ETF, First Trust RiverFront Dynamic Asia Pacific ETF, First Trust RiverFront Dynamic Emerging Markets ETF, and the First Trust RiverFront Dynamic Developed International ETF of First Trust Exchange-Traded Fund III

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 22, 2015, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to list and trade the shares of the following under Nasdaq Rule 5735 (“Managed Fund Shares”)<sup>3</sup>: First Trust RiverFront Dynamic Europe ETF (the

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR-NASDAQ-2008-039). There are already multiple actively managed funds listed on the Exchange; see, e.g., Securities Exchange Act Release Nos. 72506 (July 1, 2014), 79 FR 38631 (July 8, 2014) (SR-NASDAQ-2014-050) (order approving listing and trading of First Trust Strategic Income ETF); 69464 (April 26, 2013), 78 FR 25774 (May 2, 2013) (SR-NASDAQ-2013-036) (order

“Europe Fund”); First Trust RiverFront Dynamic Asia Pacific ETF (the “Asia Pacific Fund”); First Trust RiverFront Dynamic Emerging Markets ETF (the “Emerging Markets Fund”); and First Trust RiverFront Dynamic Developed International ETF (the “Developed International Fund”). The Europe Fund, Asia Pacific Fund, Emerging Markets Fund and Developed International Fund are each a “Fund” and collectively, the “Funds.” Each Fund is a series of First Trust Exchange-Traded Fund III (the “Trust”). The shares of each 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.

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approving listing and trading of First Trust Senior Loan Fund); and 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR-NASDAQ-2012-004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

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 each Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares<sup>4</sup> on the Exchange. Each 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 January 9, 2008.<sup>5</sup> 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.<sup>6</sup> Each Fund will be a series of the Trust.

First Trust Advisors L.P. will be the investment adviser ("Adviser") to the Funds. RiverFront Investment Group, LLC will serve as investment sub-adviser ("Sub-Adviser") to the Funds and provide day-to-day portfolio management. First Trust Portfolios L.P.

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<sup>4</sup> 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.

<sup>5</sup> The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 28468 (October 27, 2008) (File No. 812-13477) (the "Exemptive Relief").

<sup>6</sup> See Post-Effective Amendment No. 29 to Registration Statement on Form N-1A for the Trust, dated November 19, 2015 (File Nos. 333-176976 and 811-22245). The descriptions of the Funds and the Shares contained herein are based, in part, on information in the Registration Statement.

(the “Distributor”) will be the principal underwriter and distributor of each Fund’s Shares. Brown Brothers Harriman & Co. (“BBH”) will act as the administrator, accounting agent, custodian and transfer agent to the Funds.

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.<sup>7</sup> In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund’s portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer

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<sup>7</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser, the Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Adviser nor the Sub-Adviser is a broker-dealer, although the Adviser is affiliated with the Distributor, a broker-dealer, and the Sub-Adviser is affiliated with Robert W. Baird & Co. Incorporated, a broker-dealer, and each has implemented a fire wall with respect to its respective broker-dealer affiliate regarding access to information concerning the composition and/or changes to a portfolio.

In addition, personnel who make decisions on each Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such Fund's portfolio. In the event (a) the Adviser or the Sub-Adviser registers as a broker-dealer, or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to a portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Each Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

#### Principal Investment Strategies Applicable to Each Fund

Each Fund's investment objective will be to provide capital appreciation. Under normal market conditions,<sup>8</sup> each Fund will seek to achieve its investment objective by

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<sup>8</sup> 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,

investing at least 80% of its net assets (including investment borrowings) in a combination of (i) “Principal Fund Equity Securities” (as defined below), (ii) forward currency contracts and non-deliverable forward currency contracts<sup>9</sup> (collectively, “Forward Contracts”), and (iii) currency transactions on a spot (i.e., cash) basis.<sup>10</sup>

For each Fund, (a) “Principal Equity Securities” will consist of the following U.S. and non-U.S. exchange-listed securities: (i) common stocks; (ii) common and preferred shares of real estate investment trusts (“REITs”);<sup>11</sup> and (iii) American Depositary Receipts (“ADRs”), European Depositary Receipts (“EDRs”), and Global Depositary

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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 systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. On a temporary basis, including for defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, a Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, a Fund may not be able to achieve its investment objective. A Fund may adopt a defensive strategy when the Adviser and/or the Sub-Adviser believes securities in which such Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

<sup>9</sup> A non-deliverable forward currency contract is a forward currency contract where there is no physical settlement of the two currencies at maturity. Instead, a net cash payment is made by one party to another based on the movement of the two currencies.

<sup>10</sup> A Fund would enter into Forward Contracts and/or currency spot transactions for hedging purposes.

<sup>11</sup> A REIT is a company that owns and typically operates income-producing real estate or related assets.

Receipts (“GDRs” and, together with ADRs and EDRs, “Depository Receipts”<sup>12</sup>), and (b) “Principal Fund Equity Securities” will consist of Principal Equity Securities that are suggested by such Fund’s name.<sup>13</sup> Accordingly:

(i) for the Europe Fund, Principal Fund Equity Securities will be Principal Equity Securities of European companies;<sup>14</sup>

(ii) for the Asia Pacific Fund, Principal Fund Equity Securities will be Principal Equity Securities of Asian Pacific companies;<sup>15</sup>

(iii) for the Emerging Markets Fund, Principal Fund Equity Securities will be Principal Equity Securities of emerging market companies;<sup>16</sup> and

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<sup>12</sup> Depository Receipts are receipts, typically issued by a bank or trust company, which evidence ownership of underlying securities issued by a foreign entity. The Funds will not invest in any unsponsored Depository Receipts.

<sup>13</sup> For the avoidance of doubt, with respect to Depository Receipts, whether such Principal Equity Securities are Principal Fund Equity Securities is based on the underlying securities, the ownership of which is represented by the Depository Receipts (*i.e.*, whether, as described below, the relevant underlying security is a security of a European company, an Asian Pacific company, an emerging market company or a developed market company, as applicable).

<sup>14</sup> European companies are those companies (i) whose securities are traded principally on a stock exchange in a European country, (ii) that are organized under the laws of or have a principal office in a European country, or (iii) that have at least 50% of their assets in, or derive at least 50% of their revenues or profits from, a European country.

<sup>15</sup> Asian Pacific companies are those companies (i) whose securities are traded principally on a stock exchange in an Asian Pacific country, (ii) that are organized under the laws of or have a principal office in an Asian Pacific country, or (iii) that have at least 50% of their assets in, or derive at least 50% of their revenues or profits from, an Asian Pacific country.

<sup>16</sup> An emerging market company is one (i) domiciled or with a principal place of business or primary securities trading market in an emerging market country, or (ii) that derives a substantial portion of its total revenues or profits from emerging market countries.

(iv) for the Developed International Fund, Principal Fund Equity Securities will be Principal Equity Securities of developed market companies.<sup>17</sup>

In selecting securities for a Fund, the Sub-Adviser will score individual securities from a portfolio of eligible securities according to several core attributes, including, but not limited to, value, quality and momentum, using multiple proprietary factors within each core attribute.<sup>18</sup> The Sub-Adviser will then rank each qualifying security based on its core attribute score, and the highest scoring securities will be considered for inclusion in the Fund's portfolio. The Sub-Adviser will utilize its proprietary optimization process to maximize the percentage of high-scoring securities included in each Fund's portfolio.

In addition, for each Fund, by entering into Forward Contracts and currency spot transactions, the Sub-Adviser will deploy a dynamic currency hedge (hedging up to 100% of such Fund's foreign currency exposure) based on its proprietary hedging methodology. The Sub-Adviser's hedging methodology will be constructed from a combination of quantitative measures, such as interest-rate differentials, central bank balance sheet expansion/contraction, and price momentum, and qualitative measures, such as formal and informal guidance from central bankers. Each Fund will only enter into transactions in Forward Contracts with counterparties that the Adviser and/or the

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<sup>17</sup> Developed market companies are those companies (i) whose securities are traded principally on a stock exchange in a developed market country, (ii) that are organized under the laws of or have a principal office in a developed market country, or (iii) that have at least 50% of their assets in, or derive at least 50% of their revenues or profits from, a developed market country.

<sup>18</sup> An example of a value factor would be price-to-book value and an example of a quality factor would be cash as a percentage of market capitalization.

Sub-Adviser reasonably believe are capable of performing under the applicable Forward Contract.<sup>19</sup>

Other Investments for the Funds

Each Fund may invest (in the aggregate) up to 20% of its net assets in the following securities and instruments:

Each Fund may invest in the following U.S. and non-U.S. exchange-listed securities (other than Principal Fund Equity Securities): (i) common stocks; (ii) common and preferred shares of REITs; (iii) Depositary Receipts; and (iv) equity securities of business development companies (“BDCs”) (collectively, “Other Equity Securities”).<sup>20</sup>

Each Fund may invest in short-term debt securities and other short-term debt instruments (described below), as well as cash equivalents, or it may hold cash. The percentage of each Fund invested in such holdings or held in cash will vary and will depend on several factors, including market conditions. Each Fund may invest in the following short-term debt instruments:<sup>21</sup> (1) fixed rate and floating rate U.S. government

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<sup>19</sup> Each Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser and/or the Sub-Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser’s and/or Sub-Adviser’s analysis will evaluate each approved counterparty using various methods of analysis and may consider the Adviser’s and/or Sub-Adviser’s past experience with the counterparty, its known disciplinary history and its share of market participation.

<sup>20</sup> For each Fund, Other Equity Securities and Principal Fund Equity Securities are referred to collectively as “Equity Securities.”

<sup>21</sup> Short-term debt instruments will be issued by issuers having a long-term debt rating of at least A by Standard & Poor’s Ratings Services, a Division of The McGraw-Hill Companies, Inc. (“S&P Ratings”), Moody’s Investors Service, Inc. (“Moody’s”) or Fitch Ratings (“Fitch”) and have a maturity of one year or less.

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,<sup>22</sup> which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (6) commercial paper, which is short-term unsecured promissory notes;<sup>23</sup> and (7) short-term debt obligations issued or guaranteed by non-U.S. governments or by their agencies or instrumentalities.

Each Fund may invest (but only up to 5% of its net assets) in exchange-listed equity index futures contracts.

#### The Funds' Equity Securities

Under normal market conditions, each Fund will invest in at least 20 Equity Securities. Each Fund will satisfy the "ISG Criteria" (as described below) and/or the "Alternative Criteria" (as described below).

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<sup>22</sup> Each Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser and/or the Sub-Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust ("Trust Board"). The Adviser and/or the Sub-Adviser will review and monitor the creditworthiness of such institutions. The Adviser and/or the Sub-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. The Funds will not enter into reverse repurchase agreements.

<sup>23</sup> Each Fund may only invest in commercial paper rated A-1 or higher by S&P Ratings, Prime-1 or higher by Moody's or F1 or higher by Fitch.

A Fund will satisfy the ISG Criteria if at least 90% of such Fund's net assets that are invested (in the aggregate) in Equity Securities will be invested in Equity Securities that trade in markets that are members of the Intermarket Surveillance Group ("ISG")<sup>24</sup> or are parties to a comprehensive surveillance sharing agreement with the Exchange.

A Fund will satisfy the Alternative Criteria if, under normal market conditions, its Equity Securities meet the following criteria at the time of purchase: (1) non-U.S. Equity Securities<sup>25</sup> each shall have a minimum market value of at least \$100 million; (2) non-U.S. Equity Securities each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months; (3) the most heavily weighted non-U.S. Equity Security shall not exceed 25% of the weight of the Fund's entire portfolio and, to the extent applicable, the five most heavily weighted non-U.S. Equity Securities shall not exceed 60% of the weight of the Fund's entire portfolio; (4) each non-U.S. Equity Security shall be listed and traded on an exchange that has last-sale reporting; and (5) all of such Fund's net assets that are invested (in the aggregate) in Equity Securities other than non-U.S. Equity Securities shall be invested in Equity Securities that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.<sup>26</sup>

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<sup>24</sup> See note 41, *infra*.

<sup>25</sup> For purposes of this filing, the term "non-U.S. Equity Securities" means Equity Securities that are not listed on a U.S. exchange.

<sup>26</sup> Criteria (1) through (4) are similar to certain "generic" listing criteria in Nasdaq Rule 5705(b)(3)(A)(ii), which relate to criteria applicable to an index or portfolio of (a) non-U.S. stocks or (b) both U.S. and non-U.S. stocks underlying a series of Index Fund Shares to be listed and traded on the Exchange pursuant to Rule 19b-

The Funds' Transactions in Forward Contracts and Exchange-Listed Equity Index Futures Contracts

Each Fund's transactions in Forward Contracts and exchange-listed equity index futures contracts will be consistent with its investment objective and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of an index. Each Fund will comply with the regulatory requirements of the Commission with respect to coverage in connection with its transactions in Forward Contracts and exchange-listed equity index futures contracts. If the applicable guidelines prescribed under the 1940 Act so require, a Fund will earmark cash, U.S. government securities and/or other liquid assets permitted by the Commission in the amount prescribed.<sup>27</sup>

Investment Restrictions

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), deemed illiquid by the Adviser and/or the

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4(e) under the Act. In addition, the Commission recently issued an order approving a proposed rule change relating to the listing and trading under NYSE Arca Equities Rule 8.600 based, in part, on a representation that the non-U.S. equity securities in the applicable ETF's portfolio would meet criteria similar to certain "generic" listing criteria in NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(a)(B), which relate to criteria applicable to an index or portfolio of (a) non-U.S. stocks or (b) both U.S. and non-U.S. stocks underlying a series of Investment Company Units to be listed and traded on NYSE Arca, Inc. pursuant to Rule 19b-4(e) under the Act. See Securities Exchange Act Release No. 75023 (May 21, 2015), 80 F.R. 30519 (May 28, 2015) (SR-NYSEArca-2014-100) (order approving listing and trading of SPDR SSGA Global Managed Volatility ETF).

<sup>27</sup> With respect to guidance under the 1940 Act, see 15 U.S.C. 80a-18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); Dreyfus Strategic Investing, Commission No-Action Letter (June 22, 1987); Merrill Lynch Asset Management, L.P., Commission No-Action Letter (July 2, 1996).

Sub-Adviser.<sup>28</sup> Each 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 such Fund's net assets are held in illiquid assets. Illiquid assets 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.<sup>29</sup>

The Funds may not invest 25% or more of the value of their respective total assets in securities of issuers in any one industry. This restriction does not apply to (a)

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<sup>28</sup> In reaching liquidity decisions, the Adviser and/or the Sub-Adviser may consider the following factors: the frequency of trades and quotes for the security or other instrument; the number of dealers wishing to purchase or sell the security or other instrument and the number of other potential purchasers; dealer undertakings to make a market in the security or other instrument; and the nature of the security or other instrument and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security or other instrument, the method of soliciting offers and the mechanics of transfer).

<sup>29</sup> 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 and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities or (b) securities of other investment companies.<sup>30</sup>

#### Creation and Redemption of Shares

Each Fund will issue and redeem Shares on a continuous basis at net asset value (“NAV”)<sup>31</sup> only in large blocks of Shares (“Creation Units”) in transactions with authorized participants, generally including broker-dealers and large institutional investors (“Authorized Participants”). Creation Units generally will consist of 50,000 Shares, although this may change from time to time. Creation Units, however, are not expected to consist of less than 50,000 Shares. The Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of securities and/or cash in lieu of such securities (the “Creation Basket”).<sup>32</sup> In addition, if there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying securities with the lower value will pay to the other an amount in cash equal to the difference (referred to as the “Cash Component”).

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<sup>30</sup> 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).

<sup>31</sup> The NAV of each Fund’s Shares generally will be calculated once daily 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 a Fund’s net assets by the number of Fund Shares outstanding.

<sup>32</sup> It is expected that each Fund will typically issue and redeem Creation Units on an in-kind basis; however, subject to, and in accordance with, the provisions of the Exemptive Relief, a Fund may, at times, issue and redeem Creation Units on a cash (or partially cash) basis.

Creations and redemptions must be made by or through an Authorized Participant that has executed an agreement that has been agreed to by the Distributor and BBH with respect to creations and redemptions of Creation Units. All standard orders to create Creation Units must be received by the transfer agent no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., Eastern Time) (the “Closing Time”) in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt not later than the Closing Time of a redemption request in proper form by a Fund through the transfer agent and only on a business day.

The Funds’ custodian, through the National Securities Clearing Corporation, will make available on each business day, prior to the opening of business of the Exchange, the list of the names and quantities of the securities comprising the Creation Basket, as well as the estimated Cash Component (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day prior to commencement of trading in the Shares.

#### Net Asset Value

Each Fund’s NAV will be determined as of the close of regular trading on the NYSE on each day the NYSE is open for trading. If the NYSE closes early on a valuation day, the NAV will be determined as of that time. NAV per Share will be calculated for each Fund by taking the value of such Fund’s total assets, including interest or dividends accrued but not yet collected, less all liabilities, including accrued expenses and dividends declared but unpaid, and dividing such amount by the total

number of Shares outstanding. The result, rounded to the nearest cent, will be the NAV per Share. All valuations will be subject to review by the Trust Board or its delegate.

The Funds' investments will be valued daily. As described more specifically below, investments traded on an exchange (i.e., a regulated market), will generally be valued at market value prices that represent last sale or official closing prices. In addition, as described more specifically below, non-exchange traded investments will generally be valued using prices obtained from third-party pricing services (each, a "Pricing Service").<sup>33</sup> If, however, valuations for any of the Funds' investments cannot be readily obtained as provided in the preceding manner, or the Pricing Committee of the Adviser (the "Pricing Committee")<sup>34</sup> questions the accuracy or reliability of valuations that are so obtained, such investments will be valued at fair value, as determined by the Pricing Committee, in accordance with valuation procedures (which may be revised from time to time) adopted by the Trust Board (the "Valuation Procedures"), and in accordance with provisions of the 1940 Act. The Pricing Committee's fair value determinations may require subjective judgments about the value of an investment. The fair valuations attempt to estimate the value at which an investment could be sold at the time of pricing, although actual sales could result in price differences, which could be material. Valuing the Fund's investments using fair value pricing can result in using prices for those

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<sup>33</sup> The Adviser may use various Pricing Services or discontinue the use of any Pricing Services, as approved by the Trust Board from time to time.

<sup>34</sup> The Pricing Committee will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding each Fund's portfolio.

investments (particularly investments that trade in foreign markets) that may differ from current market valuations.

Certain securities in which a Fund may invest will not be listed on any securities exchange or board of trade. Such securities will typically be bought and sold by institutional investors in individually negotiated private transactions that function in many respects like an over-the-counter secondary market, although typically no formal market makers will exist. Certain securities, particularly debt securities, will have few or no trades, or trade infrequently, and information regarding a specific security may not be widely available or may be incomplete. Accordingly, determinations of the value of debt securities may be based on infrequent and dated information. Because there is less reliable, objective data available, elements of judgment may play a greater role in valuation of debt securities than for other types of securities.

The information summarized below is based on the Valuation Procedures as currently in effect; however, as noted above, the Valuation Procedures are amended from time to time and, therefore, such information is subject to change.

The following investments will typically be valued using information provided by a Pricing Service: (a) except as provided below, short-term U.S. government securities, commercial paper, bankers' acceptances and short-term debt obligations issued or guaranteed by non-U.S. governments or by their agencies or instrumentalities, all as set forth under "Other Investments for the Funds" (collectively, "Short-Term Debt Instruments") and (b) currency spot transactions. Debt instruments may be valued at evaluated mean prices, as provided by Pricing Services. Pricing Services typically value non-exchange-traded instruments utilizing a range of market-based inputs and

assumptions, including readily available market quotations obtained from broker-dealers making markets in such instruments, cash flows, and transactions for comparable instruments. In pricing certain instruments, the Pricing Services may consider information about an instrument's issuer or market activity provided by the Adviser and/or the Sub-Adviser.

Short-Term Debt Instruments having a remaining maturity of 60 days or less when purchased will typically be valued at cost adjusted for amortization of premiums and accretion of discounts, provided the Pricing Committee has determined that the use of amortized cost is an appropriate reflection of value given market and issuer-specific conditions existing at the time of the determination.

Repurchase agreements will typically be valued as follows:

Overnight repurchase agreements will be valued at amortized cost when it represents the best estimate of value. Term repurchase agreements (i.e., those whose maturity exceeds seven days) will be valued at the average of the bid quotations obtained daily from at least two recognized dealers.

Certificates of deposit and bank time deposits will typically be valued at cost.

Equity Securities that are listed on any exchange other than the Exchange and the London Stock Exchange Alternative Investment Market ("AIM") will typically be valued at the last sale price on the exchange on which they are principally traded on the business day as of which such value is being determined. Equity Securities listed on the Exchange or the AIM will typically be valued at the official closing price on the business day as of which such value is being determined. If there has been no sale on such day, or no official closing price in the case of securities traded on the Exchange or the AIM, such

securities will typically be valued using fair value pricing. Equity 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.

Exchange-listed equity index futures contracts will typically be valued at the closing price in the market where such instruments are principally traded.

Forward Contracts will typically be valued at the current day's interpolated foreign exchange rate, as calculated using the current day's spot rate, and the thirty, sixty, ninety and one-hundred-eighty day forward rates provided by a Pricing Service or by certain independent dealers in such contracts.

Because foreign exchanges may be open on different days than the days during which an investor may purchase or sell Shares, the value of the Funds' assets may change on days when investors are not able to purchase or sell Shares. Assets denominated in foreign currencies will be translated into U.S. dollars at the exchange rate of such currencies against the U.S. dollar as provided by a Pricing Service. The value of assets denominated in foreign currencies will be converted into U.S. dollars at the exchange rates in effect at the time of valuation.

#### Availability of Information

The Funds' website ([www.ftportfolios.com](http://www.ftportfolios.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. The website will include the Shares' ticker, CUSIP and exchange information along with additional quantitative information updated on a daily basis, including, for each Fund: (1) daily trading volume, the prior business day's

reported NAV and closing price, mid-point of the bid/ask spread at the time of calculation of such NAV (the “Bid/Ask Price”),<sup>35</sup> 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<sup>36</sup> on the Exchange, each Fund will disclose on its website 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.<sup>37</sup>

Each Fund’s disclosure of derivative positions in the Disclosed Portfolio will include sufficient information for market participants to use to value these positions intraday. On a daily basis, each Fund will disclose on its website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including

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<sup>35</sup> The Bid/Ask Price of each Fund will be determined using the mid-point 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 each Fund and its service providers.

<sup>36</sup> 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).

<sup>37</sup> Under accounting procedures to be followed by the Funds, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Accordingly, a 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.

the type of holding); the identity of the security, index or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and percentage weighting of the holding in the Fund's portfolio. The website information will be publicly available at no charge.

In addition, for each 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 Disclosed Portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,<sup>38</sup> 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. 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 a Fund, which is calculated only once a day.

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<sup>38</sup> Currently, the NASDAQ OMX Global Index Data Service ("GIDS") is the Nasdaq global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade Nasdaq indexes, listed ETFs, or third-party partner indexes and ETFs.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of a Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Investors will also be able to obtain each Fund's Statement of Additional Information ("SAI"), annual and semi-annual reports (together, "Shareholder Reports"), and Form N-CSR and Form N-SAR, filed twice a year. Each Fund's SAI and Shareholder Reports will be available free upon request from such Fund, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's website at [www.sec.gov](http://www.sec.gov). 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. 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. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association ("CTA") plans for the Shares. Quotation and last sale information for the Equity Securities (to the extent traded on a U.S. exchange) will be available from the exchanges on which they are traded as well as in accordance with any applicable CTA plans.

Pricing information for Short-Term Debt Instruments, repurchase agreements, Forward Contracts, bank time deposits, certificates of deposit and currency spot transactions will be available from major broker-dealer firms and/or major market data

vendors and/or Pricing Services. Pricing information for exchange-listed equity index futures contracts and non-U.S. Equity Securities will be available from the applicable listing exchange and from major market data vendors.

#### 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 continued listing, each Fund must be in compliance with Rule 10A-3<sup>39</sup> 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 a Fund. Nasdaq will halt 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 other assets constituting the Disclosed Portfolio of a 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

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<sup>39</sup> See 17 CFR 240.10A-3.

will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of a 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.<sup>40</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

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

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<sup>40</sup> FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

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 and certain of the Equity Securities and exchange-listed equity index futures contracts held by the Funds with other markets and other entities that are members of ISG,<sup>41</sup> and FINRA may obtain trading information regarding trading in the Shares and such securities and instruments held by the Funds from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and certain of the Equity Securities and exchange-listed equity index futures contracts held by the Funds from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

For each Fund, at least 90% of such Fund's net assets that are invested (in the aggregate) in exchange-listed equity index futures contracts will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

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<sup>41</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio for a Fund may trade on markets that are members of 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 for each Fund 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 and the Disclosed Portfolio 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. 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 for each Fund will reference that such Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular for each Fund will also disclose the trading hours of the Shares of such Fund and the applicable NAV Calculation Time for the Shares. The Information Circular for each Fund will disclose that information about the Shares of such Fund will be publicly available on such Fund's website.

## 2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The 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 represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

Neither the Adviser nor the Sub-Adviser is a broker-dealer, but each is affiliated with a broker-dealer, and is required to implement a “fire wall” with respect to its respective broker-dealer affiliate regarding access to information concerning the composition and/or changes to each 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.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and certain of the Equity Securities and exchange-listed equity

index futures contracts held by the Funds with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and such securities and instruments held by the Funds from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and certain of the Equity Securities and exchange-listed equity index futures contracts held by the Funds from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's TRACE. For each Fund, at least 90% of such Fund's net assets that are invested (in the aggregate) in exchange-listed equity index futures contracts will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. Under normal market conditions, each Fund will invest in at least 20 Equity Securities. Moreover, each Fund will satisfy the ISG Criteria and/or the Alternative Criteria.

The investment objective of each Fund will be to provide capital appreciation. Under normal market conditions, each Fund will seek to achieve its investment objective by investing at least 80% of its net assets (including investment borrowings) in Principal Fund Equity Securities, Forward Contracts and currency transactions entered into on a spot (i.e., cash) basis. Each Fund may also invest up to 5% of its net assets in exchange-listed equity index futures contracts. Each Fund's transactions in Forward Contracts and exchange-listed equity index futures contracts will be consistent with its investment

objective and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of an index. Each Fund will comply with the regulatory requirements of the Commission with respect to coverage in connection with its transactions in Forward Contracts and exchange-listed equity index futures contracts. If the applicable guidelines prescribed under the 1940 Act so require, a Fund will earmark cash, U.S. government securities and/or other liquid assets permitted by the Commission in the amount prescribed. Also, each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), deemed illiquid by the Adviser and/or the Sub-Adviser. Each 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 assets. Illiquid assets 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 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 Funds and the Shares, thereby promoting market transparency. Moreover, 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, each Fund will disclose on its website the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. 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, as well as in accordance with the Unlisted Trading Privileges and the CTA plans for the Shares. Quotation and last sale information for the Equity Securities (to the extent traded on a U.S. exchange) will be available from the exchanges on which they are traded as well as in accordance with any applicable CTA plans.

Pricing information for Short-Term Debt Instruments, repurchase agreements, Forward Contracts, bank time deposits, certificates of deposit and currency spot transactions will be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services. Pricing information for exchange-listed equity index futures contracts and non-U.S. Equity Securities will be available from the applicable listing exchange and from major market data vendors.

Each Fund's website will include a form of the prospectus for such Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Funds will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 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 a Fund may be halted. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Each Fund's investments will be valued daily. Investments traded on an exchange (i.e., a regulated market), will generally be valued at market value prices that represent last sale or official closing prices. Non-exchange traded investments will generally be valued using prices obtained from a Pricing Service. If, however, valuations for any of the Funds' investments cannot be readily obtained as provided in the preceding manner, or the Pricing Committee questions the accuracy or reliability of valuations that are so obtained, such investments will be valued at fair value, as determined by the Pricing Committee, in accordance with the Valuation Procedures and in accordance with provisions of the 1940 Act.

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 additional types of actively managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and certain of the Equity Securities and exchange-listed equity index futures contracts held by the Funds with other markets and other entities that are members of ISG, and FINRA may obtain trading information

regarding trading in the Shares and such securities and instruments held by the Funds from such markets and other entities.

In addition, the Exchange may obtain information regarding trading in the Shares and certain of the Equity Securities and exchange-listed equity index futures contracts held by the Funds from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's TRACE. Furthermore, as noted above, investors will have ready access to information regarding the Funds' holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares. For each Fund, at least 90% of such Fund's net assets that are invested (in the aggregate) in exchange-listed equity index futures contracts will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. Under normal market conditions, each Fund will invest in at least 20 Equity Securities. Moreover, each Fund will satisfy the ISG Criteria and/or the Alternative Criteria.

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2015-161 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and

Exchange Commission, Station Place, 100 F Street, NE, Washington, DC  
20549-9303.

All submissions should refer to File Number SR-NASDAQ-2015-161. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website <http://www.sec.gov/rules/sro.shtml>.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of 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-2015-161 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>42</sup>

Robert W. Errett  
Deputy Secretary

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<sup>42</sup> 17 CFR 200.30-3(a)(12).