Comments may be submitted by any of the following methods:

**Electronic Comments**

- Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–NYSEMKT–2016–42 on the subject line.

**Paper Comments**

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–42. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing or for inspection and copying at the principal public reference room of the Commission.10

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.21

Robert W. Errett,  
Deputy Secretary.

[FR Doc. 2016–08304 Filed 4–11–16; 8:45 am]  
BILLING CODE 8011–01–P

**SECURITIES AND EXCHANGE COMMISSION**


Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, 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 First Trust RiverFront Dynamic Developed International ETF of First Trust Exchange-Traded Fund III

April 6, 2016.

I. Introduction

On December 22, 2015, The NASDAQ Stock Market LLC (“Exchange” or “Nasdaq”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)1 and Rule 19b–4 thereunder,2 a proposed rule change to list and trade the shares of the First Trust RiverFront Dynamic Europe ETF (“Europe Fund”); First Trust RiverFront Dynamic Asia Pacific ETF (“Asia Pacific Fund”); First Trust RiverFront Dynamic Emerging Markets ETF (“Emerging Markets Fund”); and First Trust RiverFront Dynamic Developed International ETF (“Developed International Fund”). The proposed rule change was published for comment in the Federal Register on January 8, 2016.3 On January 8, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.4 On February 18, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.5 On February 19, 2016, pursuant to Section 19(b)(2) of the Act,6 the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.7 On April 5, 2016, the Exchange filed Amendment No. 3 to the proposed rule change.8 The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto.

II. Exchange’s Description of the Proposal

The Exchange proposes to list and trade the shares (“Shares”) of the Europe Fund, Asia Pacific Fund, Emerging Markets Fund, and Developed International Fund (individually, “Fund,” and collectively, “Funds”) under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. Each Fund, which will be a series of First Trust Exchange-Traded Fund III (“Trust”), will be an actively managed exchange-traded fund (“ETF”). The Shares will be offered by the Trust,9 which was established as a Massachusetts business trust on January 9, 2008. The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A with the Commission.10

First Trust Advisors L.P. will be the investment adviser (“Adviser”) to the

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4 In Amendment No. 1, the Exchange clarified the proposed rule change by providing additional information regarding the currencies, and instruments that provide exposure to such currencies, in which each Fund will invest. Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change or raise novel regulatory issues, Amendment No. 1 is not subject to notice and comment (Amendment No. 1 is available at: http://www.sec.gov/comments/sr-nasdaq-2015-161/nasdaq2015161-1.pdf).
5 In Amendment No. 2, the Exchange expanded the application of the Alternative Criteria (as discussed below) so that they will apply on a continual basis. Because Amendment No. 2 does not materially alter the substance of the proposed rule change or raise novel regulatory issues, Amendment No. 2 is not subject to notice and comment (Amendment No. 2 is available at: http://www.sec.gov/comments/sr-nasdaq-2015-161/nasdaq2015161-2.pdf).
8 In Amendment No. 3 to the proposed rule change, the Exchange clarified that: (a) All statements and representations made in the proposal regarding the description of the portfolios, limitations on portfolio holdings or reference assets, or the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange; (b) the issuer will advise the Exchange of any failure by the Funds to comply with the continued listing requirements; (c) pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements; and (d) if a Fund is not in compliance with the applicable listing requirements, the Exchange will commence listing procedures under the Nasdaq 5800 Series. Because Amendment No. 3 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 3 is not subject to notice and comment (Amendment No. 3 is available at: http://www.sec.gov/comments/sr-nasdaq-2015-161/nasdaq2015161-3.pdf).
10 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) (“Registration Statement”).
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. (“Distributor”) will be the principal underwriter and distributor of each Fund’s Shares. Brown Brothers Harriman & Co. will act as the administrator, accounting agent, custodian, and transfer agent to the Funds. According to the Exchange, neither the Adviser nor the Sub-Adviser is a broker-dealer, although the Adviser is affiliated with another broker-dealer, and the Sub-Adviser is affiliated with Robert W. Baird & Co. Incorporated, a broker-dealer. Each of the Adviser and Sub-Adviser has implemented a fire wall with respect to its respective broker-dealer affiliate regarding access to information concerning the composition or changes to a portfolio.11

The Exchange has made the following representations and statements describing the Funds and the Funds’ investment strategies, including the Funds’ portfolio holdings and investment restrictions.12

A. Exchange’s Description of Principal Investment Strategies Applicable to Each Fund

Each Fund’s investment objective will be to provide capital appreciation. Under normal market conditions,13 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 (collectively, “Forward Contracts”); and (iii) currency transactions on a spot (i.e., cash) basis.14

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) convertible and preferred shares of real estate investment trusts (“REITs”); and (iii) American Depositary Receipts (“ADR’s”), European Depositary Receipts (“EDRs”), and Global Depositary Receipts (“GDR’s” and, together with ADRs and EDRs, collectively, “Depositary Receipts”),15 and (b) “Principal Fund Equity Securities” will consist of Principal Fund Equity Securities that are suggested by such Fund’s name.16 Accordingly: (1) For the Principal International Equity Securities will be Principal Equity Securities of European companies;17 (2) for the Asia Pacific Fund, Principal Fund Equity Securities will be Principal Equity Securities of Asian Pacific companies;18 (3) for the Emerging Markets Fund, Principal Fund Equity Securities will be Principal International Equity Securities;19 and (4) for the Developed International Fund, Principal Fund Equity Securities will be Principal Equity Securities of developed market companies.20

In selecting securities for a Fund, the Sub-Adviser will score individual securities from a portfolio of eligible securities according to several core attributes, using multiple proprietary factors within each core attribute. The Sub-Adviser will then rank each qualifying security based on its score 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 and qualitative measures. 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.21

B. Exchange’s Description of Other Investments for the Funds

According to the Exchange, each Fund may invest (in the aggregate) up to 20% of its net assets in the following securities and instruments.

11 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 of, 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.

12 Additional information regarding the Funds, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value (“NAV”), distributions, and taxes, among other things, can be found in the Notice, the amendments, and the Registration Statement, as applicable. See Notice, Amendment No. 1–3, and Registration Statement, supra notes 3, 4, 5, 8, and 10, respectively.

13 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

14 With respect to Depositary Receipts, whether such Principal Equity Securities are Principal Fund Equity Securities is based on the underlying security, 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).

15 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 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.

16 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.

17 According to the Exchange, 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.
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 (collectively, “Other Equity Securities”).

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: 23 (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, 24 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; 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.

C. Exchange’s Description of the Funds’ Equity Securities

According to the Exchange, under normal market conditions, each Fund will invest in at least 20 Equity Securities. Each Fund will satisfy the “ISC 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”) 26 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 and on a continuous basis: (1) Non-U.S. Equity Securities 27 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.

D. Exchange’s Description of the Funds’ Transactions in Forward Contracts and Exchange-Listed Equity Index Futures Contracts

According to the Exchange, 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.

E. Exchange’s Description of the Funds’ 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. 28 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.

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.

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

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange’s proposal is consistent with the Exchange Act and the rules and regulations thereunder.

23 For each Fund, Other Equity Securities and Principal Fund Equity Securities are referred to collectively as “Equity Securities.”

24 The Exchange represents that 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 (“S&P Ratings”), Moody’s Investors Service, Inc. (“Moody’s”), or Fitch Ratings (“Fitch”), and have a maturity of one year or less.

25 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.

26 For a list of the current members of ISG, see 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.

27 For purposes of this filing, the term “non-U.S. Equity Securities” means Equity Securities that are not listed on a U.S. exchange.
applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto, is consistent with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the Exchange’s rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act, which sets forth Congress’s finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

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. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, each Fund will disclose on its Web site the Disclosed Portfolio held by such Fund that will form the basis for such Fund’s calculation of NAV at the end of the business day. 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, generally 4:00 p.m., Eastern Time. In addition, the Intraday Indicative Value for each Fund, available on the NASDAQ OMX Information LLC proprietary index data service, will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. 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.

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 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. In addition, the Exchange notes that the Funds’ Web site will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information.

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange states that it 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. The Exchange also represents that it may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund. The Exchange 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.36 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.

The Exchange states that it has a general policy prohibiting the distribution of non-public information by its employees. The Exchange further states that neither the Adviser nor the Sub-Adviser is a broker-dealer, but each is affiliated with a broker-dealer, and that the Adviser and Sub-Adviser has each implemented a fire wall with respect to its respective broker-dealer affiliate regarding access to information concerning the composition of, and changes to, each Fund’s portfolio.37 Further, the Commission notes that the Reporting Authority38 that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.39 The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange represents that trading in the Shares will be subject to the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (d) 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; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.40

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolios, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Funds to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.41 If a Fund is not in

36 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.37 See supra note 11 and accompanying text. The Exchange further represents that an investment adviser to a registered fund is required to be registered under the Investment Advisers Act of 1940 (“Advisers Act”). As a result, the Adviser, the Sub-Adviser, and each of its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 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 independent) responsible for administering the policies and procedures adopted under subparagraph (i) above.

38 Nasdaq Rule 5735(c)(4) defines “Reporting Authority.”


40 The Exchange represents that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA’s performance under this regulatory services agreement.

41 See 17 CFR 240.10A–3.

42 The Commission notes that certain other proposals for the listing and trading of Managed
SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations;
NASDAQ PHXL LLC; Notice of Filing
and Immediate Effectiveness of
Proposed Rule Change To Amend Rule
1064

April 6, 2016.

Pursuant to Section 19(b)(1) of the
Securities Exchange Act of 1934
(“Act”),1 and Rule 19b–4 thereunder,2
notice is hereby given that on April 1,
2016, NASDAQ PHXL LLC (“Phlx” or
“Exchange”) filed with the Securities
and Exchange Commission (“SEC” or
“Commission”) the proposed rule
change as described in Items I, II, and
III, below, which Items have been
prepared by the Exchange. The
Commission is publishing this notice to
solicit comments on the proposed rule
change from interested persons.

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

The Exchange proposes to delete two
incorrect cross-references in Rule 1064,
Crossing, Facilitation and Solicited
Orders.

The text of the proposed rule change
is detailed below: Proposed new
language is in italics and proposed
deletions are in brackets.

* * * * *

NASDAQ PHXL Rules

* * * * *

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

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

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

1. Purpose

The purpose of the filing is to correct
Rule 1064 by deleting two references to
the “commentary” to the rule, which no
longer exists. The Exchange recently
deleted Commentary.043 by
incorporating its provisions into
paragraph (d)(iii), because it was related
to the anticipatory hedging provisions
in paragraph (d). The Exchange
inadvertently omitted the deletion of
these two references to Commentary.04
in new Rule 1064(d)(iii)(G).

Accordingly, this provision refers to a
commentary that does not exist.

2. Statutory Basis

The Exchange believes that its
proposal is consistent with Section 6(b)
of the Act4 in general, and furthers the
objectives of Section 6(b)(5) of the Act5
in particular, in that it is designed to
promote just and equitable principles of
trade and to protect investors and the
public interest by correcting a provision,
which should help prevent confusion
and ensure the accuracy of the rulebook.


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Fund Shares include a representation that
the exchange will “surveil” for compliance with
the continued listing requirements. See, e.g.,
Amendment No. 2 to SR–BATS–2016–04, available
at: http://www.sec.gov/comments/sr-bats-2016-04/
bats201604-2.pdf. In the context of this
representation, it is the Commission’s view that
“monitor” and “surveil” both mean ongoing
oversight of the Fund’s compliance with the
continued listing requirements. Therefore, the
Commission does not view “monitor” as a more or
less stringent obligation than “surveil” with respect to
the continued listing requirements.