in excess of the limits in sections 12(d)(1)(A), (B) and (C) of the Act. Applicants also request an order of exemption under sections 6(c) and 17(b) of the Act from the prohibition on certain affiliated transactions in section 17(a) of the Act to the extent necessary to permit the Underlying BDCs to sell their shares to, and redeem their shares from, the Funds of Funds. Applicants state that such transactions will be consistent with the policies of each Fund of Funds and each Underlying Fund and with the general purposes of the Act and will generally be based on the net asset values of the Underlying Funds.6

The Prior Order also exempts these transactions from the extent necessary to permit such purchases and redemptions by the Funds of Funds of shares of the Prior Underlying Funds and to permit sales and redemptions by the Prior Underlying Funds of their shares in transactions with each Fund of Funds.6

With regard to purchases of underlying closed-end investment companies, the only sales transaction requiring relief from section 17(a) (a follow-on offering) generally must be priced at net asset value (plus the cost of any distributing commission or discount) unless the offering fits within a narrow range of exceptions that are designed to limit overreaching by the selling fund. For this reason, Applicants state that they do not believe that section 17(a) relief to permit sales of shares by underlying closed-end investment companies presents any different concerns or considerations than are presented in connection with section 17(a) relief to permit sales of shares by a BDC to a Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the First Trust Alternative Absolute Return Strategy ETF of First Trust Exchange-Traded Fund VII

February 25, 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 February 16, 2016, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in items I and II below, which items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Nasdaq proposes to list and trade the shares of the First Trust Alternative Absolute Return Strategy ETF (the “Fund”) of First Trust Exchange-Traded Fund VII (the “Trust”) under Nasdaq Rule 5735 (“Managed Fund Shares”).3 The shares of the Fund are collectively referred to herein as the “Shares.”

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


For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016–04509 Filed 3–1–16; 8:45 am]
BILLING CODE 8011–01–P
II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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

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

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund will be an actively-managed exchange-traded fund ("ETF") that will seek to achieve long-term 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.

The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A ("Registration Statement") with the Commission. The Fund will be a series of the Trust. As part of its investment strategy, the Fund will invest in a wholly-owned subsidiary controlled by the Fund and organized under the laws of the Cayman Islands (referred to herein as the "First Trust Subsidiary").

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

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. 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)(5)(A)(i): however, paragraph (g) in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a broker-dealer, although it is affiliated with the Distributor, which is a broker-dealer. The Adviser has implemented a firewall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In addition, personnel who make decisions on the Fund’s portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund’s portfolio. In the event (a) the Adviser or any 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 firewall 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 the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund does not currently intend to use a sub-adviser.

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

First Trust Alternative Absolute Return Strategy ETF

The Fund will be an actively-managed ETF that will seek to achieve long-term total return by using a long/short commodities strategy. Under normal market conditions, the Fund will invest in a combination of securities,
The Adviser will review and monitor the Trust's Board of Trustees (the "Trust Board").

The First Trust Subsidiary will be designed to provide the Fund with exposure to commodity markets within the limits of current federal income tax laws applicable to investment companies such as the Fund, which limit the ability of investment companies to invest directly in the derivative instruments.

The First Trust Subsidiary will have the same investment objective as the Fund, but unlike the Fund, it may invest without limitation in Commodities. Eligible Commodities will be selected based on liquidity as measured by open interest (generally, the number of contracts that are outstanding at a particular time) and volume. The list of Commodities considered for inclusion can and will change over time. Through its investment process, the Adviser will seek to maximize the total return of a long/short commodity portfolio while managing overall portfolio risk, sector risk, liquidity risk, margin risk, and position size risk. As indicated above, in addition to Commodities, the First Trust Subsidiary may invest in Other Investments.

The First Trust Subsidiary will initially consider investing in Commodities set forth in the following table. The table also provides each instrument’s trading hours, exchange and ticker symbol. The table is subject to change.

<table>
<thead>
<tr>
<th>Commodity</th>
<th>Bloomberg exchange code</th>
<th>Exchange name</th>
<th>Trading hours (E.T.)</th>
<th>Contract ticker (generic Bloomberg ticker)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cattle, Live/Choice Average</td>
<td>CME</td>
<td>Chicago Mercantile Exchange</td>
<td>18:00–17:00</td>
<td>LC</td>
</tr>
<tr>
<td>Cocoa</td>
<td>NYB</td>
<td>ICE Futures Exchange</td>
<td>04:00–14:00</td>
<td>CC</td>
</tr>
<tr>
<td>Coffee 'C'/Colombian</td>
<td>CME</td>
<td>Chicago Mercantile Exchange</td>
<td>18:00–17:00</td>
<td>CT</td>
</tr>
<tr>
<td>Soybeans/No. 2 Yellow</td>
<td>CBT</td>
<td>Chicago Board of Trade</td>
<td>03:30–14:00</td>
<td>KC</td>
</tr>
<tr>
<td>Soybeans/No. 2 Yellow</td>
<td>CBT</td>
<td>Chicago Board of Trade</td>
<td>20:00–14:15</td>
<td>S.</td>
</tr>
<tr>
<td>Soybean Oil/Grain</td>
<td>CBT</td>
<td>Chicago Board of Trade</td>
<td>20:00–14:15</td>
<td>SM</td>
</tr>
<tr>
<td>Corn/No. 2 Yellow</td>
<td>CBT</td>
<td>Chicago Board of Trade</td>
<td>20:00–14:15</td>
<td>BO</td>
</tr>
<tr>
<td>Wheat/No. 2 Soft Red</td>
<td>CBT</td>
<td>Chicago Board of Trade</td>
<td>20:00–14:15</td>
<td>C.</td>
</tr>
<tr>
<td>Sugar #11/Wold Raw</td>
<td>CBT</td>
<td>Chicago Board of Trade</td>
<td>20:00–14:15</td>
<td>KW.</td>
</tr>
<tr>
<td>Hogs, Lean/Average Iowa/S Minn</td>
<td>NYB</td>
<td>ICE Futures Exchange</td>
<td>02:30–14:00</td>
<td>SB.</td>
</tr>
<tr>
<td>Crude Oil, WTI/Global Spot</td>
<td>NYM</td>
<td>New York Mercantile Exchange</td>
<td>18:00–17:00</td>
<td>LH.</td>
</tr>
<tr>
<td>Crude Oil, Brent/Global Spot</td>
<td>ICE</td>
<td>ICE Futures Exchange</td>
<td>18:00–17:15</td>
<td>CL</td>
</tr>
</tbody>
</table>

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

The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Trust’s Board of Trustees (the “Trust Board”). The Adviser will review and monitor the creditworthiness of such institutions. The Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

For the Fund’s purposes, money market instruments will include: (i) short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; (ii) non-convertible high-quality corporate debt securities with remaining maturities of not more than 397 days; (iii) money market mutual funds; (iv) commercial paper; and (v) certificates of deposit, bank time deposits, bankers’ acceptances and short-term negotiable obligations of U.S. and non-U.S. banks and financial institutions.

The First Trust Subsidiary will also enter into separate contracts for the provision of custody, transfer agency, and accounting agent services with the same or with affiliates of the same service providers that provide those services to the Fund.
As the exchanges referenced above list additional Commodities, as currently listed Commodities on those exchanges that are not included above meet the Adviser’s selection criteria, or as other exchanges list Commodities that meet the Adviser’s selection criteria, the Adviser will include those Commodities in the list of possible investments of the First Trust Subsidiary. The list of Commodities and commodities markets considered for investment can and will change over time.

With respect to the Commodities held indirectly through the First Trust Subsidiary, not more than 10% of the weight of such instruments (in the aggregate) shall consist of instruments whose principal trading market (a) is not a member of the Intermarket Surveillance Group (“ISG”) or (b) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

Commodities Regulation

The Commodity Futures Trading Commission (“CFTC”) has adopted substantial amendments to CFTC Rule 4.5 relating to the permissible exemptions and conditions for reliance on exemptions from registration as a commodity pool operator and as a commodity pool operator is also a member of the NFA.

Investment Restrictions

The Fund may not invest more than 25% of the value of its total assets in securities of issuers in any one industry. This restriction will not apply to (a) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or (b) securities of other investment companies.

The First Trust Subsidiary’s shares will be offered only to the Fund and the Fund will not sell shares of the First Trust Subsidiary to other investors. The Fund and the First Trust Subsidiary will not invest in any non-U.S. equity securities (other than shares of the First Trust Subsidiary).

The 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. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if

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16 As defined in Section 1a(11) of the Commodity Exchange Act.

17 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).

18 In reaching liquidity decisions, the 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 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).
are not expected to consist of less than 50,000 Shares. As described in the Registration Statement and consistent with the Exemptive Relief, the Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments (the “Creation Basket”).21 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 instruments 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 Nasdaq (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 effectuated 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 the Fund through the transfer agent and only on a business day.

The Fund’s 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 instruments 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

The Fund’s NAV will be determined as of the close of regular trading on Nasdaq on each day Nasdaq is open for trading. If Nasdaq closes early on a valuation day, the NAV will be determined as of that time. NAV per Share will be calculated for the Fund by taking the value of the 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 Fund’s and the First Trust Subsidiary’s 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”).22 If, however, valuations for any of the Fund’s investments cannot be readily obtained as provided in the procedures, or the Pricing Committee of the Adviser (the “Pricing Committee”)23 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 investments of the Fund and the First Trust Subsidiary 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 the Fund and the First Trust Subsidiary 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 readily 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: Except as provided below, money market instruments (other than money market mutual funds, certificates of deposit and bank time deposits) and U.S. government and agency securities (collectively “Fixed-Income Instruments”). 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.

Fixed-Income Instruments having a remaining maturity of 60 days or less when purchased will typically be valued at cost adjusted for amortization of premiums and accrual 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.
Money market mutual funds will typically be valued at their net asset values as reported by such funds to Pricing Services. Commodities will typically be valued at the closing price in the market where such instruments are principally traded.

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 Fund’s 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 Fund’s Web site (www.ftportfolios.com), which will be publicly available to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include the Shares’ ticker, CUSIP and exchange information along with additional quantitative information updated on a daily basis, including, for the Fund: (1) Daily trading volume, the prior business day’s reported NAV and closing price, midpoint of the bid/ask spread at the time of calculation of such NAV (the “Bid/Ask Price”) and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities, Commodities and other assets (the “Disclosed Portfolio” as defined in Nasdaq Rule 5735(c)(2)) held by the Fund and the First Trust Subsidiary that will form the basis for the Fund’s calculation of NAV at the end of the business day. The 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, the Fund will disclose on the Fund’s Web site the following information regarding each portfolio holding of the Fund and the First Trust Subsidiary, 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, commodity, 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 portfolio. The Web site information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the “Intraday Indicative Value,” that reflects an estimated intraday value of the Fund’s Disclosed Portfolio (including the First Trust Subsidiary’s portfolio), will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. The Intraday Indicative Value will be based on quotes and closing prices from the instruments’ local market and may not reflect events that occur subsequent to the local market’s close. Premiums and discounts between the Intraday Indicative Value and the market price may occur. This should not be viewed as a “real time” update of the NAV per Share of the Fund, which is calculated only once a day.

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

Investors will also be able to obtain the Fund’s Statement of Additional Information (“SAI”), the Fund’s annual and semi-annual reports (together, “Shareholder Reports”), and its Form N–CSR and Form N–SAR, filed twice a year. The Fund’s SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission’s Web site at www.sec.gov. Information regarding market price and 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.

Pricing information for Fixed-Income Instruments, certificates of deposit, bank time deposits and repurchase agreements will be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services. Pricing information for Commodities will be available from the applicable listing exchange and from major market data vendors. Money market mutual funds are typically priced once each business day and their prices will be available through the applicable fund’s Web site or from major market data vendors.

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

Initial and Continued Listing

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

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, 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, Commodities and/or the other assets constituting the Disclosed Portfolio of the Fund and the First Trust Subsidiary; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares may also be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq’s existing rules governing 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.29 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 the Commodities with other markets and other entities that are members of ISG,30 and FINRA may obtain trading information regarding trading in the Shares and in the Commodities held by the First Trust Subsidiary from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and in the Commodities held by the First Trust Subsidiary 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 Fund and the First Trust Subsidiary reported to FINRA’s Trade Reporting and Compliance Engine (“TRACE”). In addition, with respect to the Commodities held indirectly through the First Trust Subsidiary, not more than 10% of the weight31 of such instruments (in the aggregate) shall consist of instruments whose principal trading market (a) is not a member of ISG or (b) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value 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 interpretative relief granted by the Commission from any rules under the Act.

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

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and 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 existing trading surveillances, administered by both Nasdaq and also FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.29 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 the Commodities with other markets and other entities that are members of ISG,30 and FINRA may obtain trading information regarding trading in the Shares and in the Commodities held by the First Trust Subsidiary from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and in the Commodities held by the First Trust Subsidiary 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 Fund and the First Trust Subsidiary reported to FINRA’s Trade Reporting and Compliance Engine (“TRACE”). In addition, with respect to the Commodities held indirectly through the First Trust Subsidiary, not more than 10% of the weight31 of such instruments (in the aggregate) shall consist of instruments whose principal trading market (a) is not a member of ISG or (b) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of

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30 FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The
31 To be calculated as the value of the Commodity divided by the total absolute notional value of the First Trust Subsidiary’s Commodities.
invest in any non-U.S. equity securities (other than shares of the First Trust Subsidiary).

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. 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, the Fund will disclose on its Web site the Disclosed Portfolio of the Fund and the First Trust Subsidiary 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. Pricing information for Fixed-Income Instruments, certificates of deposit, bank time deposits and repurchase agreements will be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services. Pricing information for Commodities will be available from the applicable listing exchange and from major market data vendors. Money market mutual funds are typically priced once each business day and their prices will be available through the applicable fund’s Web site or from major market data vendors. The Fund’s Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 or because of events that, in the view of the Exchange, will facilitate the listing and trading of a security that is an actively-managed exchange-traded product 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 the Commodities, with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in such instruments 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 Fund and the First Trust Subsidiary reported to FINRA’s TRACE. In addition, with respect to the Commodities held indirectly through the First Trust Subsidiary, not more than 10% of the weight32 of such instruments (in the aggregate) shall consist of instruments whose principal trading market (a) is not a member of ISG or (b) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. The Fund will invest up to 25% of its total assets in the First Trust Subsidiary.

The 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. The Fund will not invest directly in Commodities and the Fund expects to exclusively gain exposure to these investments by investing in the First Trust Subsidiary. The Fund and the First Trust Subsidiary will not

32 To be calculated as the value of the Commodity divided by the total absolute notional value of the First Trust Subsidiary’s Commodities.
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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (a) By order approve or disapprove such proposed rule change; or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments

• Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml); or
• Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ–2016–021 on the subject line.

Paper Comments

• Send paper comments in triplicate to Bruce J. Fields, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–NASDAQ–2016–021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site http://www.sec.gov/rules/sro.shtml. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–2016–021 and should be submitted on or before March 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.4

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016–04503 Filed 3–1–16; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 5745

February 25, 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 February 17, 2016, 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 and II 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

Pursuant to the provisions of Section 19(b)(1) of the Act, and Rule 19b–4 thereunder, Nasdaq is filing with the Commission a proposed rule change to amend Nasdaq Rule 5745 (Exchange-Traded Managed Fund (“NextShares”)) in connection with a type of open-end management investment company registered under the Investment Company Act of 1940, as amended (“1940 Act”). The shares of a NextShares are collectively referred to herein as “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, 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 Exchange proposes to amend Nasdaq Rule 5745 in connection with the trading of NextShares on Nasdaq using a new trading protocol called “NAV-Based Trading.” In NAV-Based Trading, all bids, offers and execution prices would be expressed as a premium/discount (which may be zero) to a NextShares net-determined net asset value (“NAV”) (e.g., NAV – $0.01; NAV + $0.01; NAV + $0.005).


