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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2017–47 and should be submitted on or before June 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.25

Eduardo A. Aleman, Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the First Trust California Municipal High Income ETF

May 12, 2017.

I. Introduction

On March 24, 2017, 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”)1 and Rule 19b–4 thereunder,2 a proposed rule change to list and trade shares (“Shares”) of the First Trust California Municipal High Income ETF (“Fund”) of First Trust Exchange-Traded Fund III (“Trust”) under Nasdaq Rule 5735. The proposed rule change was published for comment in the Federal Register on April 10, 2017.3 On May 12, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.4 On May 16, 2017, the Exchange filed Amendment No. 2 to the proposed rule change.5 The Commission has received no comments on the proposal. The Commission is granting approval of the proposed rule change, as modified by Amendments No. 1 and 2.

II. Exchange’s Description of the Proposed Rule Change

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”). The Trust, which was established as a Massachusetts business trust on January 9, 2008 and is registered with the Commission as an investment company, has filed with the Commission a Registration Statement on Form N–1A (“Registration Statement”).6

...Continued
achieve its investment objectives by investing at least 80% of its net assets (including investment borrowings) in municipal debt securities that pay interest that is exempt from regular federal income taxes and California income taxes (collectively, “Municipal Securities”). Municipal Securities will be issued by or on behalf of the State of California or territories or possessions of the U.S. (including without limitation Puerto Rico, the U.S. Virgin Islands and Guam), and/or the political subdivisions, agencies, authorities, and other instrumentalities of such State, territories, or possessions. Municipal Securities issued by or on behalf of territories or possessions of the U.S. and/or the political subdivisions, agencies, authorities, and other instrumentalities of such territories or possessions (collectively, “Territorial Obligations”) will pay interest that is exempt from regular federal income taxes and California income taxes.

Under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, the Fund will invest at least 80% of its net assets in Municipal Securities that are not Territorial Obligations.

The types of Municipal Securities in which the Fund may invest include municipal lease obligations (and certificates of participation in such obligations), municipal general obligation bonds, municipal revenue bonds, municipal notes, municipal cash equivalents, private activity bonds (including, without limitation, industrial development bonds), and pre-refunded and escrowed to maturity purposes, during the initial invest-up period (for purposes of this filing, i.e., the six-week period following the commencement of trading of Shares on the Exchange) and during periods of high cash inflows or outflows (for purposes of this filing, i.e., rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of the Fund’s net assets as of the opening of business on the first day of such periods), the 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, the Fund may not be able to achieve its investment objectives. According to the Exchange, the Fund may adopt a defensive strategy when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

Assuming compliance with the investment requirements and limitations described herein, the Fund may invest up to 100% of its net assets in Municipal Securities that pay interest that generates income subject to the federal alternative minimum tax. A pre-refunded municipal bond is a municipal bond that has been refunded to a call date on or before the final maturity of principal and remains outstanding in the municipal market. The payment of principal and interest of the pre-refunded bonds. In addition, Municipal Securities include securities issued by entities (referred to as “Municipal Entities”) whose underlying assets are municipal bonds (i.e., tender option bond trusts and custodial receipts trusts).

The Fund may invest in Municipal Securities of any maturity. However, under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, the weighted average maturity of the Fund will be less than or equal to 14 years.

Under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, the Fund will invest at least 50% of its net assets in “investment grade Municipal Securities,” which are Municipal Securities that are, at the time of investment, rated investment grade (i.e., rated Baa3/BBB – or above) by at least one nationally recognized statistical rating organization (“NRSRO”) rating such securities (or Municipal Securities that are unrated and determined by the Adviser to be of comparable quality) (“Investment Grade Requirement”). The Fund will consider pre-refunded or escrowed to maturity bonds, regardless of rating, to be investment grade Municipal Securities. Under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, the Fund will invest no more than 50% of its net assets in Municipal Securities that are, at the time of investment, not investment grade Municipal Securities (commonly referred to as “high yield” or “junk” bonds). If, subsequent to purchase by the Fund, a Municipal Security held by the Fund experiences a decrease in credit quality and is no longer an investment grade Municipal Security, the Fund may continue to hold the Municipal Security, and it will not cause the Fund to violate the Investment Grade Requirement; however, the Municipal Security will be taken into account for purposes of determining whether purchases of additional Municipal Securities will cause the Fund to violate the Investment Grade Requirement.

Certain representations included in this filing, described below, will meet or exceed similar requirements set forth in the generic listing standards for actively Managed ETFs (“Generic Listing Standards”). It is not anticipated that the Fund will meet the requirement that components in the aggregate account for at least 75% of the average daily net asset value (which due to the Fund’s income weight of the portfolio each have a minimum original principal amount outstanding of $100 million or more. In general terms, as described above, the Fund will operate as an actively Managed ETF that normally invests in a portfolio of Municipal Securities and will be subject to the Investment Grade Requirement. The Adviser notes that debt issuance sizes for municipal obligations are generally smaller than for corporate obligations. Furthermore, as a general matter, municipal borrowers in certain industries with municipal obligations rated in the “A” and “BBB” categories (in which the Fund currently intends to significantly invest) tend to have less

10 These Municipal Securities may include Municipal Securities that are currently in default and not expected to pay the current coupon (“Distressed Municipal Securities”). The Fund may invest up to 10% of its net assets in Distressed Municipal Securities. If, subsequent to purchase by the Fund, a Municipal Security held by the Fund becomes a Distressed Municipal Security, the Fund may continue to hold the Distressed Municipal Security, and it will not cause the Fund to violate the 10% limitation; however, the Distressed Municipal Security will be taken into account for purposes of determining whether purchases of additional Municipal Securities will cause the Fund to violate such limitation.

11 These industries include charter schools, senior living facilities (i.e., continuing care retirement communities), and special districts and others. See infra note 27 and accompanying text (providing additional information regarding the Fund’s exposure to different industries). In the case of a municipal conduit financing (in general terms, the issuance of municipal securities by an issuer to finance a project to be used primarily by a third party (“conduit borrower”)), the “borrower” is the conduit borrower (i.e., the party on which a

12 Comparable quality of unrated Municipal Securities will be determined by the Adviser based on fundamental credit analysis of the unrated security and comparable rated securities. On a best efforts basis, the Adviser will attempt to make a rating determination based on publicly available data. In making a “comparable quality” determination, the Adviser may consider, for example, whether the issuer of the security has issued other rated securities, the nature and provisions of the relevant security, whether the obligations under the relevant security are guaranteed by another entity and the rating of such guarantor (if any), relevant cash flows, macroeconomic analysis, and/or sector or industry analysis.

13 These Municipal Securities may include Municipal Securities that are currently in default and not expected to pay the current coupon (“Distressed Municipal Securities”). The Fund may invest up to 10% of its net assets in Distressed Municipal Securities. If, subsequent to purchase by the Fund, a Municipal Security held by the Fund becomes a Distressed Municipal Security, the Fund may continue to hold the Distressed Municipal Security, and it will not cause the Fund to violate the 10% limitation; however, the Distressed Municipal Security will be taken into account for purposes of determining whether purchases of additional Municipal Securities will cause the Fund to violate such limitation.

14 See Nasdaq Rule 5735(b)(1)(B)(i).

15 These industries include charter schools, senior living facilities (i.e., continuing care retirement communities), and special districts and others. See infra note 27 and accompanying text (providing additional information regarding the Fund’s exposure to different industries). In the case of a municipal conduit financing (in general terms, the issuance of municipal securities by an issuer to finance a project to be used primarily by a third party (“conduit borrower”)), the “borrower” is the conduit borrower (i.e., the party on which a
outstanding debt than municipal borrowers in other municipal industries. Therefore, under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, the Fund’s portfolio of Municipal Securities will include securities from a minimum of 30 non-affiliated issuers. Moreover, under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, component securities that in the aggregate account for at least 90% of the weight of the Fund’s portfolio of Municipal Securities will be exempted securities as defined in Section 3(a)(12) of the Act. Additionally, to the extent the Fund invests in Municipal Securities that are mortgage-backed or asset-backed securities, such investments will not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the Fund’s portfolio.

B. Exchange’s Description of the Fund’s Other Investments

The Fund may invest up to an aggregate of 20% of its net assets in the securities and other instruments (including cash) described in this section. The Fund may invest in the following short-term debt instruments: (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, which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and (6) commercial paper, which is short-term unsecured promissory notes.

The Fund may (i) invest in the securities of other investment companies registered under the 1940 Act, including money market funds, ETFs, open-end funds (other than money market funds and other ETFs), and closed-end funds and (ii) acquire short positions in the securities of the foregoing investment companies.

The Fund may (i) invest in exchange-listed options on U.S. Treasury securities, exchange-listed options on U.S. Treasury futures contracts, and exchange-listed U.S. Treasury futures contracts (collectively, “Listed Derivatives”) and (ii) acquire short positions in the Listed Derivatives. Transactions in the Listed Derivatives may allow the Fund to obtain net long positions in the Listed Derivatives.

21 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 Board of Trustees of the Trust. 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.

22 The Fund may only invest in commercial paper rated A–3 or higher by S&P, Prime-3 or higher by Moody’s, or F3 or higher by Fitch.

23 An ETF is an investment company registered under the 1940 Act that holds a portfolio of securities. ETFs included in the Fund will be listed and traded in the U.S. on one or more registered exchanges. The Fund may invest in the securities of certain ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by such ETFs and their sponsors from the Commission.

24 While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (e.g., 2X or –3X) ETFs.
or short exposures to selected interest rates. The Listed Derivatives may also be used to hedge risks, including interest rate risks and credit risks, associated with the Fund’s portfolio investments. In addition, to hedge interest rate risks associated with the Fund’s portfolio investments, the Fund may invest in over-the-counter (‘‘OTC’’) forward contracts and OTC swaps (collectively, ‘‘OTC Derivatives’’).24 The Fund will only enter into transactions in OTC Derivatives with counterparties that the Adviser reasonably believes are capable of performing under the applicable contract or agreement.25 The Fund’s investments in derivative instruments will be consistent with the Fund’s investment objectives and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of the Fund’s broad-based securities market index (as defined in Form N–1A).

G. Exchange’s Description of the Fund’s Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities and securities deemed illiquid by the Adviser.26 The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund’s net assets are held in illiquid assets. Illiquid assets include

24 On both an initial and continuing basis, no more than 20% of the assets in the Fund’s portfolio will be invested in the OTC Derivatives and, for purposes of calculating this limitation, the Fund’s investment in the OTC Derivatives will be calculated as the aggregate gross notional value of the OTC Derivatives.

25 The 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 will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser’s analysis will evaluate each approved counterparty using various methods of analysis and consider the Adviser’s past experience with the counterparty, its known disciplinary history and its share of market participation.

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

securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry. This restriction does not apply to (a) municipal securities issued by governments or political subdivisions of governments, (b) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or (c) securities of other investment companies. In addition, under normal market conditions, except for the initial investment period and periods of high cash inflows or outflows, the Fund’s investments in Municipal Securities will provide exposure (based on dollar amount invested) to at least 10 different industries 27 (with no more than 25% of the value of the Fund’s net assets comprised of Municipal Securities that provide exposure to any single industry).28

III. Discussion and Commission’s Findings

After careful review, the Commission finds that the Exchange’s proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.29 In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,30 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 Act,31 which sets forth the finding of Congress 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. Quotation and last-sale information for exchange-listed equity securities (including other ETFs and closed-end funds) will be available from the exchanges on which they are traded as well as in accordance with any applicable CTA plans. Quotation and last-sale information for U.S. exchange-listed options will be available via the Options Price Reporting Authority. One source of price information for Municipal Securities and taxable and other municipal securities will be the Electronic Municipal Market Access (‘‘EMMA’’) of the Municipal Securities Rulemaking Board (‘‘MSRB’’).32 Additionally, the MSRB offers trade data subscription services that permit subscribers to obtain same-day pricing information about municipal securities transactions. Moreover, pricing information for Municipal Securities, as well as for taxable municipal securities and other municipal securities, Short-Term Debt Instruments (including short-term U.S. government securities, commercial paper, and bankers’ acceptances), repurchase agreements and OTC Derivatives (including forward contracts and swaps) will be available from major broker-dealer firms and/or major market data vendors and/or Pricing Services. Pricing information for Listed Derivatives (including options on U.S. Treasury securities, options on U.S. Treasury futures contracts, and U.S. Treasury futures contracts), ETFs and closed-end funds will be available from the applicable listing exchange and from major market data vendors. Money market funds and other open-end funds (excluding ETFs) are typically priced on a business day and their prices will be available through the applicable fund’s Web site or from major market data vendors.

The Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data

27 The municipal industry classification system used by the Fund will divide the municipal securities universe into distinct categories that are intended to reflect either the use of proceeds generated by particular subsets of municipal securities or the collateral/sources of repayment securing/backing such municipal securities. For example, municipal bonds associated with the airport industry are issued to construct or expand an airport and/or related facilities and are secured by revenues generated from the use of the airport.

28 For the avoidance of doubt, in the case of Municipal Securities that are issued by Municipal Entities, the underlying municipal bonds will be taken into account.

29 Information available on EMMA includes next-day information regarding municipal securities transactions and par amounts traded. In addition, a source of price information for certain taxable municipal securities is the Trade Reporting and Compliance Engine (‘‘TRACE’’) of the Financial Industry Regulatory Authority (‘‘FINRA’’).
service, will be based upon the current value for the components of the Disclosed Portfolio (defined below) 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. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (“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. The Fund’s Web site, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information that may be downloaded.

Information regarding market price and trading volume of the Shares will be published daily on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The Fund’s disclosure of derivative positions in the Disclosed Portfolio will include sufficient information for market participants to use to value these positions intraday. Additionally, FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-listed securities and instruments held by the Fund (including closed-end funds, ETFs, and Listed Derivatives) with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”). FINRA may obtain trading information regarding trading in the Shares and such exchange-listed securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-listed securities and instruments held by the Fund 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 reported to FINRA’s TRACE.

The Commission further 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 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. 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). In addition, 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, for example, in which trading is not occurring in the securities and/or the other assets constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Further, the Commission notes that the Reporting Authority 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. In addition, the Exchange states that the Adviser is not a broker-dealer, but it is affiliated with the Distributor, a broker-dealer, and is required to implement and maintain a “fire wall” with respect to such broker-dealer affiliate regarding access to information concerning the composition of, and/or changes to, the Fund’s portfolio. Moreover, Nasdaq Rule 5735(g) 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 Fund’s portfolio.

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both the Exchange and FINRA, on behalf of the Exchange, which are designed to detect violations...
of Exchange rules and applicable federal securities laws. The Exchange further 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. Moreover, the Exchange states that, prior to the commencement of trading, it will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including the following:

(1) The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-listed securities and instruments held by the Fund (including closed-end funds, ETFs, and Listed Derivatives) with other markets and other entities that are members of ISG, and FINRA may obtain trading information regarding trading in the Shares and such exchange-listed securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-listed securities and instruments held by the Fund from such 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 reported to FINRA’s TRACE, and the MSRB’s EMMA will be a source of price information for Municipal Securities and taxable and other securities

(4) 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: (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.

(5) For initial and continued listing, the Fund must be in compliance with Rule 10A–3 under the Act;

(6) Under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, the Fund will invest at least 80% of its net assets in Municipal Securities that are not Territorial Obligations.

(7) Under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, the Fund will invest at least 50% of its net assets in investment grade Municipal Securities, and the Fund will invest no more than 50% of its net assets in Municipal Securities that are, at the time of investment, not investment grade Municipal Securities.

(8) The Fund may not invest more than 10% of its net assets in Distressed Municipal Securities.

(9) To the extent the Fund invests in Municipal Securities that are mortgage-backed or asset-backed securities, such investments will not account, in the aggregate, for more than 20% of the fixed income portion of the Fund’s portfolio.

(10) At least 40% (based on dollar amount invested) of the Municipal Securities in which the Fund invests will be issued by issuers with total outstanding debt issuances that, in the aggregate account for at least 90% of the weight of the fixed income portion of the Fund’s portfolio.

(11) On both an initial and continuing basis, no more than 20% of the assets in the Fund’s portfolio will be invested in the OTC Derivatives and, for purposes of calculating this limitation, the Fund’s investment in the OTC Derivatives will be calculated as the aggregate gross notional value of the OTC Derivatives. The Fund will only enter into transactions in OTC Derivatives with counterparties that the Adviser reasonably believes are capable of performing under the applicable contract or agreement.

(12) Under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, the Fund’s investments in Municipal Securities will provide exposure (based on dollar amount invested) to at least 10 different industries (with no more than 25% of the value of the Fund’s net assets comprised of Municipal Securities that provide exposure to any single industry).

(13) ETFs included in the Fund will be listed and traded in the U.S. on one or more registered exchanges. While the Fund may invest in inverse ETFs, the Fund will not invest in inverse leveraged (e.g., 2X or 3X) ETFs.

(14) Under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows: No component fixed-income security (excluding the U.S. government securities described in “Other Investments”) will represent more than 15% of the Fund’s net assets, and the five most heavily weighted component fixed income securities in the Fund’s portfolio (excluding U.S. government securities) will not, in the aggregate, account for more than 25% of the Fund’s net assets. Further, under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, the Fund’s portfolio of Municipal Securities will include securities from a minimum of 30 non-affiliated issuers. Moreover, under normal market conditions, except for the initial invest-up period and periods of high cash inflows or outflows, component securities that in the aggregate account for at least 90% of the weight of the Fund’s portfolio of Municipal Securities will be exempted securities as defined in Section 3(a)(12) of the Act.

(15) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if,
through a change in values, net assets, or other circumstances, more than 15% of the Fund’s net assets are held in illiquid assets.

(16) The Fund’s investments in derivative instruments will be consistent with the Fund’s investment objectives and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of the Fund’s broad-based securities market index (as defined in Form N–1A).

(17) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or intraday indicative values, or (d) the applicability of Exchange listing rules 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 Fund to comply with the continued listing requirements.44 If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

This order is based on all of the Exchange’s representations, including those set forth above and in Amendments No. 1 and 2. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 for the Shares to be listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and 2, is consistent with Section 6(b)(5) of the Act and Section 11A(a)(1)(C)(iii) of the Act.

and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASDAQ–2017–033), as modified by Amendments No. 1 and 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.46

Eduardo A. Aleman, Assistant Secretary.

[FR Doc. 2017–10973 Filed 5–26–17; 8:45 am]

BILLING CODE 8011–01–P

SEcurities And EXCHANGE COMMISSION


Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Opening Process

May 23, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), and Rule 19b–4 thereunder, notice is hereby given that on May 10, 2017, Nasdaq ISE, LLC (“ISE” or “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 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 amend the trading hours and Opening Process of Foreign Currency Index options and also amend a reference to All-or-None Orders.

The text of the proposed rule change is available on the Exchange’s Web site at www.ise.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the 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 this rule change is to amend: (i) The trading hours, including during the Opening Process, of Foreign Currency Index options; and (ii) a specific rule text reference in Rule 701 related to All-or-None Orders.

Foreign Currency Options

ISE Rule 2008, “Trading Sessions,” among other things, governs transactions in Foreign Currency Index options. The rule provides that such product may be effected on the Exchange between the hours of 7:30 a.m. Eastern Time and 4:15 p.m. Eastern Time.

At this time, the Exchange proposes to amend ISE Rules 2008 and 2010 so that Foreign Currency Index options will start trading at 9:30 AM Eastern Time instead of 7:30 a.m. Eastern Time. The purpose of this rule change is to conform the start time for the trading of Foreign Currency Options to that of other products.

Likewise, ISE Rule 701, “Opening,” which was recently approved, provides that Market Maker Valid Width Quotes and Opening Sweeps received starting at 9:25 a.m. Eastern Time, or 7:25 a.m.

44 The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will “survive” for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (April 7, 2016), 81 FR 20428 (April 7, 2016) (SR–BATS–2016–01). In the context of this representation, it is the Commission’s view that “monitor” and “survive” both mean ongoing oversight of a fund’s compliance with the continued listing requirements. Therefore the Commission does not view “monitor” as a more or less stringent obligation than “survive” with respect to the continued listing requirements.