

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74742; File No. SR-NASDAQ-2015-011)

April 16, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, to List and Trade the Shares of the First Trust Strategic Floating Rate ETF of First Trust Exchange-Traded Fund IV

I. Introduction

On February 12, 2015, The NASDAQ Stock Market LLC (the “Exchange” or “Nasdaq”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)² and Rule 19b-4 thereunder,³ a proposed rule change to list and trade shares (“Shares”) of the First Trust Strategic Floating Rate ETF (the “Fund”) of First Trust Exchange-Traded Fund IV (the “Trust”) under NASDAQ Rule 5735. The proposed rule change was published for comment in the Federal Register on March 3, 2015.⁴ On April 6, 2015, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ On April 15, 2015, the Exchange filed Amendment No. 2 to the proposed rule change.⁶ The Commission received no comments on the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 74378 (February 25, 2015), 80 FR 11509 (“Notice”).

⁵ In Amendment No. 1, the Exchange clarified that the quotation and last-sale information will be available via the Options Price Reporting Authority only for U.S. exchange-listed options that the Fund holds. Amendment No. 1 is not subject to notice and comment because it is a technical amendment that does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

⁶ In Amendment No. 2, the Exchange removed exchange-listed options on U.S. Treasury securities from the types of derivative instruments in which the Fund may invest. Amendment No. 2 is not subject to notice and comment because it does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

This order approves the proposed rule change, as modified by Amendments No. 1 and No. 2.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares 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 Shares will be offered by the Trust.⁷ 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.⁸ The Fund will be a series of the Trust.

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. The Bank of New York Mellon Corporation will act as the administrator, accounting agent, custodian and transfer agent to the Fund. The Exchange states that the Adviser is not a broker-dealer, although it is affiliated with the Distributor, a broker-dealer.⁹ In addition, the Exchange states that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and that 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

⁷ The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the Investment Company Act of 1940 (“1940 Act”). See Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812-13795) (the “Exemptive Relief”). In addition, the Commission has issued no-action relief that the Fund believes affects its ability to invest in derivatives notwithstanding certain representations in the application for the Exemptive Relief. See Commission No-Action Letter (December 6, 2012).

⁸ See Post-Effective Amendment No. 104 to Registration Statement on Form N-1A for the Trust, dated January 29, 2015 (File Nos. 333-174332 and 811-22559).

⁹ See Notice, supra note 4, 80 FR at 11510.

information regarding the Fund's portfolio.¹⁰ In the event (a) the Adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.¹¹ The Fund does not currently intend to use a sub-adviser.

The Exchange has made the following representations and statements regarding the Fund.¹²

Principal Investments for the Fund

The investment objective of the Fund will be to seek current income. To achieve its objective, the Fund will invest, under normal market conditions,¹³ at least 80% of its net assets in a portfolio of the following types of floating-rate debt instruments issued by U.S. and non-U.S. public- and private-sector entities: floating-rate corporate¹⁴ and government bonds and notes;

¹⁰ See id.

¹¹ See id.

¹² Additional information regarding, among other things, the Fund, the Shares, the Fund's investment objectives, the Fund's strategies, methodology and restrictions, risks; fees and expenses associated with the Shares, creations and redemptions of Shares, availability of price information, trading rules and halts, and surveillance procedures can be found in the Notice and the Registration Statement. See Notice, supra note 4, and Registration Statement, supra note 8, respectively.

¹³ The term "under normal market conditions" includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income 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.

¹⁴ The Adviser expects that, generally, under normal market conditions, for a corporate bond to be considered as an eligible investment, after taking into account such an

floating-rate agency securities; floating-rate instruments of non-U.S. issuers; floating-rate privately-issued securities;¹⁵ floating-rate asset-backed securities; floating-rate mortgage-backed securities; floating-rate loans; and investment companies that invest primarily in the foregoing types of debt instruments (collectively, “Floating Rate Debt Instruments”).

According to the Exchange, at least 65% of the Fund’s net assets will be invested in Floating Rate Debt Instruments that are, at the time of purchase, investment grade. The Exchange represents that to be considered “investment grade,” under normal market conditions, rated Floating Rate Debt Instruments will carry, at the time of purchase, a rating in the highest four rating categories of at least one nationally recognized statistical ratings organization (“NRSRO”) (e.g., BBB- or higher by Standard & Poor’s Ratings Services, and/or Fitch Ratings, or Baa3 or higher by Moody’s Investors Service, Inc).¹⁶ For unrated securities to be considered “investment grade,” under normal market conditions, such securities will be determined, at the time of purchase, to be of comparable quality¹⁷ by the Adviser. The Exchange states that the

investment, at least 75% of the Fund’s net assets that are invested in floating-rate corporate bonds and, as described below, fixed-rate corporate bonds (in the aggregate), will be comprised of corporate bonds that have, at the time of original issuance, \$100 million or more par amount outstanding. See Notice, supra note 4, 80 FR at 11511, n.10.

¹⁵ Under normal market conditions, the privately-issued securities in which the Fund will invest will have, at the time of original issuance, \$100 million or more principal amount outstanding to be considered eligible investments. See id. at 11511, n.12.

¹⁶ The Exchange states that if a security is rated by multiple NRSROs and receives different ratings, the Fund will treat the security as being rated in the highest rating category received from an NRSRO. See id. at 11511, n.18.

¹⁷ Comparable quality of unrated securities will be determined by the Adviser based on fundamental credit analysis of the unrated security and comparable NRSRO-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

Fund may invest up to 35% of its net assets in securities that are, at the time of investment, rated below investment grade by each NRSRO rating such securities (or securities that are unrated and determined by the Adviser to be of comparable quality), commonly referred to as “high yield” or “junk” bonds. If, subsequent to purchase by the Fund, a security held by the Fund experiences a decline in credit quality and falls below investment grade, the Fund may continue to hold the security, and it will not cause the Fund to violate the 35% investment limitation; however, the security will be taken into account for purposes of determining whether purchases of additional securities will cause the Fund to violate such limitation.¹⁸

The Exchange states that the Fund will limit its investments in asset-backed securities (excluding agency mortgage-backed securities) and non-agency mortgage-backed securities (in the aggregate) to 20% of its net assets. In addition, the Fund will limit its investments in junior loans to 20% of its net assets.¹⁹

The Fund will hold debt securities (including, in the aggregate, Floating Rate Debt Instruments and the fixed-rate debt securities described below) of at least 13 non-affiliated issuers.

Other Investments

Under normal market conditions, the Fund will invest primarily in the Floating Rate Debt Instruments described above to meet its investment objective. In addition, the Fund may invest up to 20% of its net assets in the following types of fixed-rate debt securities: corporate and government bonds and notes; agency securities; instruments of non-U.S. issuers in developed markets; privately-issued securities; asset-backed securities; mortgage-backed securities;

sector or industry analysis. See id. at 11511, n.19.

¹⁸ See id. at 11511.

¹⁹ See id.

municipal bonds; money market securities; and investment companies (including investment companies advised by the Adviser) that invest primarily in the foregoing types of debt securities.

Further, to pursue its investment objective, the Fund may invest up to 20% of the value of its net assets in exchange-listed options on U.S. Treasury futures contracts and exchange-listed U.S. Treasury futures contracts.²⁰ The use of these derivative transactions may allow the Fund to obtain net long or short exposures to selected interest rates. These derivatives may also be used to hedge risks, including interest rate risks and credit risks, associated with the Fund's portfolio investments. According to the Exchange, the Fund's investments in derivative instruments will be consistent with the Fund's investment objective and the 1940 Act and will not be used to seek to achieve a multiple or inverse multiple of an index.

Investment Restrictions

The Fund will 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) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities or (b) securities of other investment companies.

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

²⁰ At least 90% of the Fund's net assets that are invested in exchange-traded derivative instruments will be invested in instruments that trade in markets that are members of the Intermarket Surveillance Group ("ISG") or are parties to a comprehensive surveillance sharing agreement with the Exchange. See id. at 11512, n.28.

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 Fund will not invest in non-U.S. equity securities.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.²¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,²² 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 finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,²³ which sets forth Congress' 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. Quotation and last-sale information for the

²¹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²² 15 U.S.C. 78f(b)(5).

²³ 15 U.S.C. 78k-1(a)(1)(C)(iii).

other ETFs in which the Fund will invest will be available via the quote and trade services of their respective primary exchanges, as well as in accordance with the Unlisted Trading Privileges and the CTA plans, as applicable. Quotation and last-sale information for U.S. exchange-listed options will be available via the Options Price Reporting Authority.²⁴

Intraday executable price quotations on Floating Rate Debt Instruments and other assets not traded on an exchange will be available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services.²⁵ Additionally, the Trade Reporting and Compliance Engine (“TRACE”) of the Financial Industry Regulatory Authority (“FINRA”) will be a source of price information for corporate bonds, privately-issued securities, mortgage-backed securities and asset-backed securities to the extent transactions in such securities are reported to TRACE.²⁶ For exchange-traded assets, intraday pricing information will be available directly from the applicable listing exchange. 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.

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. On each business day, before commencement of trading in Shares in the Regular Market Session

²⁴ See Amendment No. 1, supra note 5.

²⁵ See Notice, supra note 4, 80 FR at 11514.

²⁶ See id.

(9:30 a.m. to 4:00 p.m. or 4:15 p.m., Eastern Time) on the Exchange, the Fund will disclose on its website the identities and quantities of the portfolio of securities and other assets (the “Disclosed Portfolio” as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund’s calculation of NAV at the end of the business day.²⁷ The Fund’s disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. The website information will be publicly available at no charge. The NAV of the 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. 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.²⁸ The Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,²⁹ 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.³⁰ The Fund’s website

²⁷ Under accounting procedures to be followed by the Fund, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

²⁸ See id.

²⁹ Currently, the NASDAQ OMX Global Index Data Service (“GIDS”) is the NASDAQ OMX global index data feed service. The Exchange represents that GIDS offers real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs, and that GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

³⁰ See id.

will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.³¹

The Exchange represents that it 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 also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.³² 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.³³ The Exchange states that the Adviser is not a broker-dealer, although it is affiliated with the Distributor, a broker-dealer. In addition, the Exchange states that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and that 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.³⁴ In the event (a) the Adviser becomes, 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

³¹ See id. at 11516.

³² 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 the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. See id. at 11514.

³³ See id. at 11515.

³⁴ See id. at 11510.

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.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund with other markets and other entities that are members of ISG,³⁵ and FINRA may obtain trading information regarding trading in the Shares and the exchange-traded 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-traded 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 Floating Rate Debt Instruments and other debt securities held by the Fund reported to FINRA's TRACE.

The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 to be listed and traded on the Exchange. Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. In support of this proposal, the Exchange represented that:

³⁵ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

- (1) The Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.
- (2) Trading in the Shares will be subject to the existing trading surveillances administered by both Nasdaq and FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to detect and help deter violations of Exchange rules and applicable federal securities laws.
- (3) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (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 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/or continued listing, the Fund must be in compliance with Rule 10A-3³⁶ under the Act.
- (6) Under normal market conditions, privately-issued securities will have, at the time of original issuance, \$100 million or more principal amount outstanding to be considered eligible investments.
- (7) Not more than 35% of the Fund's net assets will be invested in securities that are, at the time of investment, rated below investment grade by each NRSRO rating such securities (or securities that are unrated and determined by the Adviser to be of comparable quality).
- (8) Not more than 20% of the Fund's net assets will be invested in asset-backed securities (excluding agency mortgage-backed securities) and non-agency mortgage-backed securities (in the aggregate) to 20% of its net assets.
- (9) Not more than 20% of the Fund's net assets will be invested in in junior loans.
- (10) At least 90% of the Fund's net assets that are invested in exchange-traded derivative instruments will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.
- (11) The Fund will 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) obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities or (b) securities of other investment companies.

³⁶ See 17 CFR 240.10A-3.

- (12) 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.
- (13) The Fund will not invest in non-U.S. equity securities.
- (14) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice. For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 and No. 2, is consistent with Section 6(b)(5) of the Act³⁷ and the rules and regulations thereunder applicable to a national securities exchange.

³⁷ 15 U.S.C. 78f(b)(5).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,³⁸ that the proposed rule change (SR-NASDAQ-2015-011), as modified by Amendments No. 1 and No. 2, is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

Brent J. Fields
Secretary

³⁸ 15 U.S.C. 78s(b)(2).

³⁹ 17 CFR 200.30-3(a)(12).