

The Commission believes FINRA's proposed rule change, as amended, raises questions as to whether it is consistent with the requirements of Section 15A(b)(6) and 15A(b)(9) of the Exchange Act.

V. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the changes to the proposed rule change as set forth in Amendment No. 1, as well as any others they may have identified with the proposed rule change, as amended. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is inconsistent with Section 15A(b)(6) or any other provision of the Exchange Act, or the rules and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²² Interested persons are invited to submit written data, views, and arguments by October 28, 2013 concerning Amendment No. 1 and regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 12, 2013. 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-FINRA-2013-025 on the subject line.

Paper Comments

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

²² Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

All submissions should refer to File Number SR-FINRA-2013-025. 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 such filing also will be available for inspection and copying at the principle office of FINRA. 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 publicly available.

All submissions should refer to File Number SR-FINRA-2013-025 and should be submitted on or before October 28, 2013. If comments are received, any rebuttal comments should be submitted by November 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Kevin M. O'Neill,

Deputy Secretary.

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²³ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70638; File No. SR-NASDAQ-2013-107]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of the Shares of the First Trust Global Tactical Commodity Strategy Fund of First Trust Exchange-Traded Fund VII

October 9, 2013.

I. Introduction

On August 16, 2013, The NASDAQ Stock Market LLC ("Exchange" or "Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares ("Shares") of the First Trust Global Tactical Commodity Strategy Fund ("Fund") under Nasdaq Rule 5735. The proposed rule change was published for comment in the **Federal Register** on August 30, 2013.³ The Commission received no comments on this proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by First Trust Exchange-Traded Fund VII ("Trust"), which is organized as a Massachusetts business trust and is registered with the Commission as an open-end investment company.⁴ First Trust Advisors L.P. will be the investment adviser ("Adviser") to the Fund. First Trust Portfolios L.P. 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. The Exchange states that the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 70253 (August 26, 2013), 78 FR 53799 ("Notice").

⁴ The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). See Registration Statement on Form N-1A for the Trust, dated November 13, 2012 (File Nos. 333-184918 and 811-22767) ("Registration Statement"). The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act ("Exemptive Order"). See Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812-13795).

Adviser is not a broker-dealer but is affiliated with a broker-dealer and that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of or changes to the Fund's portfolio.⁵

The Fund's investment objective will be to provide total return by providing investors with commodity exposure while seeking a relatively stable risk profile. The Fund will pursue its objective by seeking to invest through a wholly-owned subsidiary in a broadly diversified portfolio composed principally of commodity futures contracts.

Principal Investments

Fund's Investments

The Fund will be an actively managed exchange-traded fund ("ETF") that will seek to achieve attractive risk adjusted returns by investing in exchange-traded commodity futures contracts and exchange-traded commodity linked instruments⁶ (collectively, "Commodities") through a wholly-owned subsidiary controlled by the Fund and organized under the laws of the Cayman Islands ("First Trust Subsidiary"). The Fund will seek to gain exposure to the futures markets through investments in the First Trust Subsidiary. The Fund's investment in the First Trust Subsidiary may not exceed 25% of the Fund's total assets. The remainder of the Fund's assets will primarily be invested in: (1) Short-term investment grade fixed income securities that include U.S. government and agency securities,⁷ sovereign debt

obligations of non-U.S. countries, and repurchase agreements;⁸ (2) money market instruments;⁹ (3) ETFs and other investment companies registered under the 1940 Act; and (4) cash and other cash equivalents.

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

The Fund will use the fixed-income securities as investments and to collateralize the First Trust Subsidiary's commodity exposure on a day-to-day basis. The Fund may also invest directly in ETFs¹⁰ and other investment companies, including, to the extent permitted under the 1940 Act, exchange-traded closed-end funds that provide exposure to commodities, equity securities, and fixed income securities.¹¹

According to the Exchange, the Fund's investment in the First Trust Subsidiary will be designed to help the

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.

⁸ 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 Fund's Board of Trustees ("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.

⁹ For the Fund's purposes, money market instruments will include: Short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies, and instrumentalities; non-convertible corporate debt securities with remaining maturities of not more than 397 days that satisfy ratings requirements under Rule 2a-7 of the 1940 Act; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions. As a related matter, the Fund may invest in shares of money market mutual funds to the extent permitted by the 1940 Act.

¹⁰ An ETF is an investment company registered under the 1940 Act that holds a portfolio of securities. Many ETFs are designed to track the performance of a securities index, including industry, sector, country, and region indexes. ETFs included in the Fund will be listed and traded in the U.S. on registered exchanges. Pursuant to exemptive orders obtained by other ETFs and their sponsors from the Commission, the Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act. The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depositary Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (e.g., 2X or -3X) ETFs.

¹¹ The equity securities (including shares of ETFs and closed-end funds) in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.

Fund achieve exposure to commodity returns in a manner consistent with the federal tax requirements applicable to the Fund and other regulated investment companies.

First Trust Subsidiary's Investments

The First Trust Subsidiary will seek to make investments generally in Commodities while managing volatility, as measured by annualized standard deviation, to a more consistent range than statistically weighted commodity indices. The investment weightings of the underlying Commodities held by the First Trust Subsidiary will be rebalanced in an attempt to stabilize risk levels. According to the Exchange, the dynamic weighting process will result in a disciplined, systematic investment process which will be keyed off of the Adviser's volatility forecasting process.

The First Trust Subsidiary will be advised by the Adviser.¹² The Fund's investment in the First Trust Subsidiary is intended 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. The First Trust Subsidiary's investments will provide the Fund with exposure to domestic and international markets.

The First Trust Subsidiary may have both long and short positions in Commodities. However, for a given Commodity, the First Trust Subsidiary will have a net long exposure. The First Trust Subsidiary will initially consider investing in specific exchange-traded¹³

¹² The First Trust Subsidiary will not be registered under the 1940 Act and will not be directly subject to its investor protections, except as noted in the Registration Statement. However, the First Trust Subsidiary will be wholly-owned and controlled by the Fund and will be advised by the Adviser. Therefore, according to the Exchange, the Fund's ownership and control of the First Trust Subsidiary will prevent the First Trust Subsidiary from taking action contrary to the interests of the Fund or its shareholders. The Exchange states that the Board will have oversight responsibility for the investment activities of the Fund, including its expected investment in the First Trust Subsidiary, and the Fund's role as the sole shareholder of the First Trust Subsidiary. The Adviser will receive no additional compensation for managing the assets of the First Trust Subsidiary. 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.

¹³ All of the exchanges are ISG members except for the London Metal Exchange ("LME"). According

⁵ See Nasdaq Rule 5735(g). In the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Adviser, any new adviser, or any new sub-adviser will implement a fire wall with respect to its relevant personnel and the broker-dealer affiliate, if applicable, regarding access to information concerning the composition of 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.

⁶ According to the Exchange, exchange-traded commodity linked instruments include: (1) ETFs that provide exposure to commodities as would be listed under Nasdaq Rules 5705 and 5735; and (2) pooled investment vehicles that invest primarily in commodities and commodity-related instruments as would be listed under Nasdaq Rules 5710 and 5711. Such pooled investment vehicles are commonly referred to as "exchange traded funds," but they are not registered as investment companies because of the nature of their underlying investments.

⁷ 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 that have been established or sponsored by the U.S. government. According to the Exchange, U.S. Treasury obligations are backed by the "full faith and credit" of the U.S.

futures contracts set forth in a table in the Notice.

As U.S. and London exchanges list additional contracts, as currently listed contracts on those exchanges gain sufficient liquidity, or as other exchanges list sufficiently liquid contracts, the Adviser will include those contracts in the list of possible investments of the First Trust Subsidiary. The list of commodities futures and commodities markets considered for investment can and will change over time.

Commodities Regulation

According to the Exchange, the Commodity Futures Trading Commission ("CFTC") has recently 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. As a result of the instruments that will be indirectly held by the Fund, the Adviser has registered as a commodity pool operator¹⁴ and is also a member of the National Futures Association ("NFA"). The Exchange states that the Fund and the First Trust Subsidiary are subject to regulation by the CFTC and NFA and to the additional disclosure, reporting, and recordkeeping rules imposed upon commodity pools.

Other Investments

The Fund may invest in certificates of deposit issued against funds deposited in a bank or savings and loan association. In addition, the Fund may invest in bankers' acceptances, which are short-term credit instruments used to finance commercial transactions.

The Fund may invest in 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. In addition, the Fund may invest in commercial paper, which are short-term unsecured promissory notes, including master demand notes¹⁵ issued by corporations to finance their current operations. The Fund may invest in commercial paper only if it has received the highest rating from at least one nationally recognized

statistical rating organization or, if unrated, has been judged by the Adviser to be of comparable quality.

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 or group of industries. This restriction will not apply to obligations issued or guaranteed by the U.S. government or its agencies or instrumentalities or to 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 will not purchase securities of open-end or closed-end investment companies except in compliance with the 1940 Act.

Pursuant to the Exemptive Order, the Fund will not invest directly in options contracts, futures contracts, or swap agreements; however, this restriction will not apply to the First Trust Subsidiary.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser and master demand notes.¹⁶ 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 securities. Illiquid securities 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 intends to qualify for and to elect to be treated as a separate regulated investment company under Subchapter M of the Internal Revenue Code.¹⁷

¹⁶ 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 trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

¹⁷ 26 U.S.C. 851.

Under the 1940 Act, the Fund's investment in investment companies will, subject to certain exceptions, be limited to: (i) 3% of the total outstanding voting stock of any one investment company, (ii) 5% of the Fund's total assets with respect to any one investment company, and (iii) 10% of the Fund's total assets with respect to investment companies in the aggregate.

The Fund's and the First Trust Subsidiary's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

Additional information regarding the Fund and the Shares, including investment strategies, futures contracts and futures exchange information, risks, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions, and taxes is included in the Notice and Registration Statement, as applicable.¹⁸

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act¹⁹ and the rules and regulations thereunder applicable to a national securities exchange.²⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²¹ which requires, among other things, that the Exchange's rules be 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, 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 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.

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 Act,²² which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets

¹⁸ See Notice and Registration Statement, *supra* notes 3 and 4, respectively.

¹⁹ 15 U.S.C. 78f.

²⁰ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78k-1(a)(1)(C)(iii).

to the Exchange, the LME falls under the jurisdiction of the United Kingdom Financial Conduct Authority ("FCA"). The Exchange states that the FCA is responsible for ensuring the financial stability of the exchange members' businesses, whereas the LME is largely responsible for the oversight of day-to-day exchange activity, including conducting the arbitration proceedings under the LME arbitration regulations.

¹⁴ As defined in Section 1a(11) of the Commodity Exchange Act.

¹⁵ Master demand notes are direct lending arrangements between the Fund and a corporation.

to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. According to the Exchange, 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 plans for the Shares and any underlying exchange-traded products. In addition, 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. 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, as defined in Nasdaq Rule 5735(c)(2), held by the Fund and the First Trust Subsidiary, which will form the basis for the Fund's calculation of net asset value ("NAV") at the end of the business day.²³ The Fund's NAV will be determined as of the close of trading (normally 4:00 p.m. Eastern Time) on each day the New York Stock Exchange is open for business. Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Intra-day, executable price quotations on the securities, Commodities, and other assets held by the Fund and the First Trust Subsidiary will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day price information will also be available through subscription services, such as Bloomberg, Markit, and Thomson Reuters, which can be accessed by authorized participants and other investors. The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to

²³ The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting, and market value of securities, Commodities, and other assets held by the Fund and the First Trust Subsidiary and the characteristics of such assets. The Web site and information will be publicly available at no charge.

NAV and other applicable quantitative information.

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 Commission notes 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.²⁴ In addition, trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange may halt trading in the Shares if trading is not occurring in the securities, Commodities, and other assets constituting the Disclosed Portfolio of the Fund and the First Trust Subsidiary or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²⁵ 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.²⁶ The Commission notes that the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange,²⁷ will communicate as needed regarding trading in the Shares, Commodities, and other exchange-traded securities and instruments held by the Fund and the First Trust Subsidiary with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and FINRA may obtain trading information regarding trading in the

²⁴ See Nasdaq Rule 5735(d)(1)(B).

²⁵ See Nasdaq Rule 5735(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). 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 also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

²⁶ See Nasdaq Rule 5735(d)(2)(B)(ii).

²⁷ The Exchange states that, while FINRA surveils trading on the Exchange pursuant to a regulatory services agreement, the Exchange is responsible for FINRA's performance under this regulatory services agreement.

Shares, Commodities, and other exchange-traded securities and instruments held by the Fund and the First Trust Subsidiary from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, Commodities, and other exchange-traded securities and instruments held by the Fund and the First Trust Subsidiary from markets and other entities that are members of ISG, which includes securities and futures exchanges,²⁸ or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that the Adviser is not a broker-dealer but is affiliated with a broker-dealer, and that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio.²⁹

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:

(1) The Shares will be subject to Nasdaq Rule 5735, which sets forth the

²⁸ With respect to the futures contracts held indirectly through the First Trust Subsidiary, not more than 10% of the weight of such futures contracts in the aggregate will consist of instruments whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

²⁹ See *supra* note 5. An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

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

(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 continued listing, the Fund and the First Trust Subsidiary must be in compliance with Rule 10A-3 under the Exchange Act.³⁰

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

(7) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser and master demand notes.

(8) The equity securities (including shares of ETFs and closed-end funds) in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG, which includes all U.S. national securities exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. 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).

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

(10) The Fund's investment in the First Trust Subsidiary may not exceed 25% of the Fund's total assets.

(11) The Fund's and the First Trust Subsidiary's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The Fund may invest in inverse ETFs, but it will not invest in leveraged or inverse leveraged ETFs.

(12) Pursuant to the Exemptive Order, the Fund will not invest directly in options contracts, futures contracts, or swap agreements. However, this restriction will not apply to the First Trust Subsidiary. With respect to the futures contracts held indirectly through the First Trust Subsidiary, not more than 10% of the weight of such futures contracts in the aggregate shall consist of instruments whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.³¹

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act³² 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,³³ that the proposed rule change (SR-NASDAQ-2013-107) be, and it hereby is, approved.

³¹ The Commission notes that it does not regulate the market for futures in which the Fund plans to take positions. Limits on the positions that any person may take in futures may be directly set by the CFTC or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

³² 15 U.S.C. 78f(b)(5).

³³ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70636; File No. SR-Topaz-2013-05]

Self-Regulatory Organizations; Topaz Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to PIM and Penny Pilot Periods

October 9, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 27, 2013, the Topaz Exchange, LLC (d/b/a ISE Gemini) (the "Exchange" or "Topaz") 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 self-regulatory organization. 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 the Substance of the Proposed Rule Change

Topaz is proposing to amend its rules to correct date references related to two pilot programs being conducted on the Exchange: the PIM Pilot and Penny Pilot, each as defined below. The Exchange is also proposing to revise a provision describing how the Exchange notifies Members about which option classes are eligible to trade in the Penny Pilot. The text of the proposed rule change is available on the Exchange's Internet Web site at <http://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 the 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

³⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³⁰ 17 CFR 240.10A-3.