

Securities Exchange Act of 1934  
Rule 14e-5

August 15, 2014

Ms. Michele M. Anderson, Chief  
Mr. Daniel F. Duchovny, Special Counsel  
Office of Mergers and Acquisitions  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Re: Request  
for Exemptive and No-Action Relief  
from Rule 14e-5, promulgated under the  
Securities Exchange Act of 1934, for  
an Actively Managed Exchange-Traded Fund

Dear Ms. Anderson and Mr. Duchovny:

The First Trust Exchange-Traded Fund IV (the "*Trust*") was organized as a Massachusetts business trust on September 15, 2010 and is registered with the Securities and Exchange Commission (the "*Commission*") as an open-end management investment company. The Trust requests relief under the Securities Exchange Act of 1934 (the "*Exchange Act*") on behalf of itself and the market participants discussed below with respect to a series of the Trust that will operate as an exchange-traded fund (an "*ETF*").

This letter requests relief for the following newly-created series of the Trust: the First Trust Strategic Income ETF (the "*Fund*"). The Fund was organized on January 22, 2014 and the Trust launched the Fund on August 14, 2014. Shares of the Fund ("*Fund Shares*") are listed on The NASDAQ Stock Market LLC (the "*Listing Exchange*"). The Trust will issue and redeem Fund Shares in aggregations of 50,000 Fund Shares (referred to as "*Creation Units*").

The Trust is overseen by a board of trustees (the "*Board*") that will maintain the composition requirements of Section 10 of the Investment Company Act of 1940, as amended (the "*1940 Act*"). The Fund has adopted fundamental policies consistent with the 1940 Act and is classified as "non-diversified" under the 1940 Act. The Fund intends to maintain the required level of diversification, and otherwise conduct its operations, so as to meet the regulated

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investment company diversification requirements of the Internal Revenue Code of 1986, as amended.

The Trust, on behalf of itself, the Fund, the Listing Exchange and any other national securities exchange on or through which the Fund Shares may subsequently trade (with each such market being a “Market”), and persons or entities engaging in transactions in Fund Shares, as the case may be, requests that the Commission grant exemptive and no-action relief from Rule 14e-5 under the Exchange Act.

On October 24, 2006, the Commission granted relief to the PowerShares Exchange-Traded Fund Trust with respect to, among other rules under the Exchange Act, Rule 14e-5.<sup>1</sup> ETFs listed and traded on an exchange may rely upon the relief granted in the Class Relief Index ETF Letter without the submission of an Exchange Act exemptive/no-action relief request if such ETFs meet specified conditions, including that each of the ETFs be managed to track a particular index.<sup>2</sup> Since the Fund is not an index-based ETF, it is not entitled to rely on the Class Relief Index ETF Letter.

The Commission staff (“Staff”) has previously issued relief substantially similar to that requested herein to actively managed ETFs that are listed and traded on a national securities exchange and satisfy certain conditions.<sup>3</sup> In particular, on June 21, 2012 and January 8, 2014, the Staff granted relief with respect to Rule 14e-5 to two other actively managed ETFs in the

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<sup>1</sup> See Letter from James A. Brigagliano to Stuart M. Strauss, Esq. regarding Class Relief for Exchange Traded Index Funds, dated October 24, 2006 (the “Class Relief Index ETF Letter”). Relief was granted for the Commission by the Division of Market Regulation (now the Division of Trading and Markets) pursuant to delegated authority.

<sup>2</sup> See Class Relief Index ETF Letter, *supra* note 1, at 3.

<sup>3</sup> See Letter from Josephine J. Tao to Grail Advisors ETF Trust, dated April 30, 2009 (revised May 6, 2009) (the “Grail Letter”); and Letter from James A. Brigagliano to PowerShares Actively Managed Exchange-Traded Fund Trust, dated April 4, 2008 (the “PowerShares Letter”). In addition, in the Letter from Josephine J. Tao to WisdomTree Trust, dated May 9, 2008 (the “WisdomTree Letter”), the Staff stated that it had repeatedly expressed its views on Exchange Act Section 11(d)(1) and Exchange Act Rules 10b-10, 11d1-2, 15c1-5 and 15c1-6 (the “Other Exchange Act Provisions”) with respect to ETFs that are not tied to an index. The Staff stated that it therefore would not respond to requests for relief under the Other Exchange Act Provisions relating to ETFs that are not managed to track a particular index unless they present novel or unusual issues. Because the Trust does not believe that the creation, redemption, listing or trading of Fund Shares should present any novel or unusual issues, the Trust does not request relief from the Other Exchange Act Provisions, but will rely on the applicable precedent in that regard. In addition, the Trust notes that on September 10, 2010, the Staff issued the Division of Market Regulation Staff Legal Bulletin No. 9 which stated that, subject to certain conditions, actively managed ETFs, such as the Fund, could rely on the exceptions in Rules 101(c)(4) and 102(d)(4) of Regulation M under the Exchange Act which are only available to open-end investment companies, notwithstanding the fact that shares of actively managed ETFs are redeemable only in Creation Unit aggregations. Moreover, the Trust notes that on June 19, 2012, the Commission issued an order granting a limited exemption from Rule 10b-17 under the Exchange Act to any issuer of an actively managed ETF. Exchange Act Release No. 67,215 (June 19, 2012).

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First Trust fund complex (the “*Prior First Trust Letters*”).<sup>4</sup> Similar to the ETFs in the Prior First Trust Letters, the Fund’s portfolio will be fully transparent and permit arbitrage activity, and will in all material respects operate in a manner similar to index-based ETFs other than being actively managed. The relief requested by the Trust is substantially similar to the relief granted in the Prior First Trust Letters and the Other Rule 14e-5 Relief; therefore, the Trust does not believe that the relief requested raises any significant new regulatory issues.

This letter is divided into four parts. Part I describes the relevant parties, including the Fund; Part II describes transactions in the Fund Shares; Part III contains the request for relief; and Part IV is the conclusion.

## I. PARTIES

### A. THE ADVISOR

First Trust Advisors L.P. (the “*Advisor*”) will be the investment advisor to the Fund. The Advisor is an Illinois limited partnership, with its principal office located at 120 East Liberty Drive, Suite 400, Wheaton, Illinois 60187. The Advisor is registered as an “investment adviser” under Section 203 of the Investment Advisers Act of 1940 (the “*Advisers Act*”).

### B. THE DISTRIBUTOR

First Trust Portfolios L.P. (the “*Distributor*”) will act as distributor and principal underwriter of the Creation Units of Fund Shares of the Fund. The Distributor is a broker-dealer registered under the Exchange Act and a member in good standing of the Financial Industry Regulatory Authority (“*FINRA*”). The Distributor will distribute Fund Shares on an agency basis. The Distributor is an “affiliated person” of the Advisor within the meaning of Section 2(a)(3)(C) of the 1940 Act. The Board has adopted a distribution and service plan under Rule 12b-1 under the 1940 Act (a “*12b-1 Plan*”) on behalf of the Fund that authorizes the Fund to pay an annual 12b-1 fee of up to 25 basis points calculated on the average daily net asset value (“*NAV*”); however, no such fee is currently being paid by the Fund and the Board has not approved any such payments for the current fiscal year.

### C. THE FUND

The primary investment objective of the Fund is to seek risk-adjusted income and its secondary investment objective is capital appreciation. The Fund is a multi-manager,

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<sup>4</sup> See Letter from Michele M. Anderson, Chief, Office of Mergers and Acquisitions, to Suzanne M. Russell, Esq. (January 8, 2014); and Letter from Michele M. Anderson, Chief, Office of Mergers and Acquisitions, to Suzanne M. Russell, Esq. (June 21, 2012). See also Letter from Michele M. Anderson, Chief, Office of Mergers and Acquisitions, to Benjamin J. Haskin, Esq. (February 19, 2014); Letter from Michele M. Anderson, Chief, Office of Mergers and Acquisitions, to W. John McGuire, Esq. (July 11, 2013); Letter from Michele M. Anderson, Chief, Office of Mergers and Acquisitions, to Benjamin J. Haskin, Esq. (April 16, 2013) (collectively, the “*Other Rule 14e-5 Relief*”).

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multi-strategy actively managed ETF. The following will serve as investment sub-advisors (each, a “*Sub-Advisor*”) to the Fund: First Trust Global Portfolios Ltd; Energy Income Partners, LLC; Stonebridge Advisors LLC; and Richard Bernstein Advisors LLC. The Advisor’s Investment Committee determines the Fund’s strategic allocation among various general investment categories and allocates the Fund’s assets to portfolio management teams comprised of personnel of the Advisor and/or a Sub-Advisor (each, a “*Management Team*”), which employ their respective investment strategies. The Fund’s investment categories will be: (i) high yield corporate bonds and first lien senior secured floating rate bank loans; (ii) mortgage-related investments; (iii) preferred securities; (iv) international sovereign bonds; (v) equity securities of energy infrastructure companies; and (vi) dividend paying domestic equity securities and depository receipts, together with a related option overlay strategy. In addition to the option overlay strategy referenced in investment category (vi), the Management Teams may utilize derivative instruments in implementing their respective investment strategies for the Fund. The Fund seeks to achieve its objectives by having each Management Team focus on those securities within its respective investment category. Subject to satisfaction of applicable requirements, the Fund may add or remove investment categories or Management Teams at the discretion of the Advisor.

## D. OTHER SERVICE PROVIDERS

The Trust has appointed entities to provide administrative, custodial, transfer agency, fund accounting and dividend disbursing functions for the Fund. The entity providing custodial services is hereafter the “*Custodian*” and the entity serving as transfer agent for the Fund is hereafter the “*Transfer Agent*.”

## II. TRANSACTIONS IN FUND SHARES

### A. FUND SHARES

The Fund will issue and redeem Fund Shares only in Creation Units comprised of 50,000 Fund Shares. Fund Shares will be listed on a U.S. national securities exchange as defined in Section 2(a)(26) of the 1940 Act (an “*Exchange*”) and will trade in the secondary market in the same manner as other equity securities. One or more Exchange specialists or market makers, as applicable, will be assigned to the Fund Shares. Neither the Distributor nor any other affiliated person of the Fund or the Advisor will maintain a secondary market in Fund Shares.

Fund Shares will be registered in book-entry form only; the Fund will not issue certificates for Fund Shares. The Depository Trust Company, New York, New York, a limited purpose trust company organized under the laws of the State of New York (the “*DTC*”), or its nominee will be the record or registered owner of all outstanding Fund Shares. Beneficial ownership of Fund Shares (owners of such beneficial interests referred to herein as “*Beneficial Owners*”) will be shown on the records of the DTC or DTC participants (“*DTC and DTC Participants*”). Shareholders will exercise their rights in such securities indirectly through the DTC and DTC Participants. The references herein to owners or holders of such Fund Shares shall reflect the rights of persons holding an interest in such securities as they may indirectly

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exercise such rights through the DTC and DTC Participants, except as otherwise specified. No shareholder shall have the right to receive a certificate representing such Fund Shares. Delivery of all notices, statements, shareholder reports and other communications from the Fund to Beneficial Owners will be through the customary practices and facilities of the DTC and DTC Participants.

### B. SALES OF FUND SHARES

The Fund will sell Fund Shares to investors through Authorized Participants (as defined below) only in Creation Units through the Distributor on a continuous basis at the NAV per share next determined after an order in proper form is received. The consideration for purchase of Creation Units of the Fund may consist of (i) cash in lieu of all or a portion of the Deposit Securities, as defined below, and/or (ii) a designated portfolio of securities (the “*Deposit Securities*”) designated by the Advisor, together with the deposit or refund of a specified cash payment (the “*Cash Component*”). Together, the Deposit Securities and the Cash Component (including the cash in lieu amount) constitute the “*Fund Deposit*,” which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The Trust will issue and sell Creation Units of the Fund on any day that the Trust is open for business, including as required by Section 22(e) of the 1940 Act (each a “*Business Day*”). The NAV of the Fund will be determined as of the close of the regular trading session on the New York Stock Exchange (ordinarily, 4:00 p.m. Eastern time) on each Business Day.

Creation Units may be purchased through an “*Authorized Participant*” which is either (1) a “*Participating Party*,” *i.e.*, a broker-dealer or other participant in the applicable clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (“*NSCC*”) or (2) a DTC Participant, which in either case has executed an agreement with the Distributor and the Transfer Agent with respect to purchases and redemptions of Creation Units (a “*Participant Agreement*”). All standard orders to create a Creation Unit must be received by the Transfer Agent no later than the order cut-off time as described in the applicable Participant Agreement (ordinarily, 4:00 p.m. Eastern Time) (the “*Order Cut-Off Time*”) on the date such order is placed, in order for creation of Creation Units to be effected based on the NAV of Fund Shares as next determined on such date. In the case of custom orders, the purchase order must be received no later than 3:00 p.m. Eastern Time (or such other time as specified in the Participant Agreement).

### C. REDEMPTIONS OF FUND SHARES

Beneficial Owners of Fund Shares must accumulate enough Fund Shares to constitute a Creation Unit in order to redeem through the Trust. Orders to redeem Creation Units must be delivered through an Authorized Participant that has executed a Participant Agreement. Creation Units will be redeemable at the NAV next determined after receipt of a request for redemption by the Trust. Fund Shares will be redeemed in Creation Units in exchange for cash and/or a particular portfolio of securities (“*Fund Securities*” and individually, a “*Fund Security*”). The Trust will redeem Fund Shares of the Fund on any Business Day. Redemption requests must generally be received by the Order Cut-Off Time (ordinarily, 4:00 p.m. Eastern Time, or such

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other time specified by the Fund) to be redeemed that day. In the case of custom redemptions, the request must be received by the time specified by the Fund.

Unless cash redemptions are available or specified for the Fund, the redemption proceeds for a Creation Unit will consist of Fund Securities plus or minus a “*Cash Redemption Amount*” as the case may be (collectively a “*Fund Redemption*”). The Cash Redemption Amount is cash in an amount equal to the difference between the NAV of the Creation Unit being redeemed and the market value of the Fund Securities. Accordingly, to the extent that the Fund Securities have a value greater than the NAV of the Fund Shares being redeemed, a cash payment equal to the differential is required to be paid by the redeeming investor to the Fund.

## D. ADDITIONAL INFORMATION

In order to defray the transaction expenses, including brokerage and operational processing costs and part or all of the spread between the expected bid and offer side of the market related to Deposit Securities or Fund Securities, as applicable, that will be incurred by the Fund when investors purchase or redeem Creation Units, and other expenses, such as custody fees, stamp taxes and the like, the Fund will impose purchase and redemption transaction fees (“*Transaction Fees*”) to be borne only by such purchasers or redeemers. The Transaction Fees will take into account transaction and operational processing costs associated with the relevant Deposit Securities and Fund Securities.

The Fund’s Custodian, through the NSCC, will make available on each Business Day, prior to the opening of business on the Listing Exchange, the list of Deposit Securities and Fund Securities that will be applicable to purchase and redemption requests received in proper form on that day.

## III. REQUEST FOR RELIEF FROM RULE 14E-5

Rule 14e-5 prohibits a person who makes a cash tender offer or exchange offer for any equity security from directly or indirectly purchasing such security (or a security immediately convertible into or exchangeable for or exercisable for such security (a “*related security*”)) otherwise than pursuant to such tender offer or exchange offer. The Rule also applies to, among various other persons specified in the Rule and referred to as “*Covered Persons*,” the dealer-manager of a tender or exchange offer. Accordingly, the Rule may pertain to a Covered Person acting as a dealer-manager of a tender or exchange offer for an equity security in which the Fund invests.

The Trust respectfully requests that the Commission grant an exemption from Rule 14e-5 to permit any person (including a member or member organization of an Exchange or other Market) acting as a dealer-manager of a tender or exchange offer for any equity security that is part of a group of securities that is received by the Fund when it issues a Creation Unit *i.e.*, Deposit Securities, or part of the group of securities that the Fund distributes when it redeems a Creation Unit, *i.e.*, Fund Securities, during the existence of such offer: (1) to redeem Fund Shares in Creation Unit size aggregations for Fund Securities that may include a security subject

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to the tender or exchange offer; and (2) to engage in secondary market transactions in Fund Shares during such offer.

The acquisition of individual Fund Securities by means of redemptions of Fund Shares would be impractical and extremely inefficient in view of the requirement that a minimum number of Fund Shares (*i.e.*, a Creation Unit) be redeemed. In addition, application of the Rule's prohibition would impede the valid and useful market and arbitrage activity which would assist secondary market trading and improve Fund Share pricing efficiency. In no case would redemptions of Fund Shares or secondary market transactions by dealer-managers relying on the relief be effected for the purpose of facilitating a tender offer. Accordingly, purchases and redemptions of Fund Shares in the circumstances described would not appear to result in the abuses at which Rule 14e-5 is directed.

In addition to the above request for relief, the Trust is requesting no-action relief in connection with purchases of Creation Units of Fund Shares by a broker-dealer (including a member or member organization of an Exchange or other Market) acting as dealer-manager of a tender offer for securities in which the Fund invests. The Trust acknowledges that Rule 14e-5(b)(5) provides an exception to its prohibition for purchases or arrangements to purchase a basket of securities containing a subject security or a related security if: (i) the purchase or arrangement is made in the ordinary course of business and not to facilitate the tender offer; (ii) the basket contains 20 or more securities; and (iii) covered securities and related securities do not comprise more than 5% of the value of the basket (the "*Basket Exception*").

As indicated by the Commission in the release adopting Rule 14e-5,<sup>5</sup> transactions in baskets in accordance with the Basket Exception provide little opportunity for a Covered Person to facilitate an offer<sup>6</sup> or for a security holder to exact a premium from the offeror. Given that the purchases and redemptions of Creation Units of ETFs in general typically involve baskets of securities, broker-dealers acting as dealer-managers of tender offers for securities in which the Fund invests may, in certain cases, be able to rely on the Basket Exception in purchasing Creation Units of Fund Shares. From time to time, however, a change in the composition of the portfolio securities of the Fund may result in a change in the basket that has been established for purposes of purchasing its Creation Units. As a consequence, the basket could contain less than 20 securities and/or covered securities and related securities could comprise more than 5% of the value of the basket. For example, a liquidation of the issuer of one of the securities or a merger involving the acquisition of the issuer of one of the securities could cause the number of securities in the basket to fall below 20 and/or could cause covered securities and related securities to comprise more than 5% of the value of the basket. Additionally, as a result of fluctuations in the market value of the securities held in the basket, covered securities and related securities could, at times, comprise more than 5% of the value of the basket. This would result in the unavailability of the Basket Exception for a broker-dealer acting as a dealer-manager of a tender offer for securities in which the Fund invests.

<sup>5</sup> See Exchange Act Release No. 42,055 (October 22, 1999) (the "*Rule 14e-5 Adopting Release*").

<sup>6</sup> As discussed in the Rule 14e-5 Adopting Release, "facilitation of an offer" includes purchases intended to bid up the market price of the covered or related security, and includes buying a basket to strip out the covered security in an effort to get the offeror the number of shares it is seeking.

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In order to address situations (including but not limited to the foregoing examples) where the basket contains less than 20 securities and/or covered securities and related securities comprise more than 5% of the value of the basket, the Trust respectfully requests that the Staff take a no-action position under Rule 14e-5 if a broker-dealer (including a member or member organization of an Exchange or other Market) acting as a dealer-manager of a tender offer for any securities in which the Fund invests purchases such securities in the secondary market for the purpose of tendering such securities to purchase one or more Creation Units of Fund Shares, if such purchases are effected as adjustments to the basket in the ordinary course of business as a result of a change in the composition of the Fund's portfolio and are not effected for the purpose of facilitating such tender offer. Relief would be necessary in order to permit such broker-dealers to effect purchases of Creation Units of Fund Shares under such circumstances given that the Basket Exception would not be available. This extension of the Basket Exception is consistent with the relief granted in the Prior First Trust Letters and the Other Rule 14e-5 Relief that accommodated a potential factual circumstance associated with the operation of ETFs and remains consistent with the rationale underlying the adoption of the Basket Exception. Similarly, we note, in particular, that purchases would not be effected for the purpose of facilitating a tender offer and therefore would not appear to result in the abuses at which Rule 14e-5 is directed. Further, we note that the Commission has previously granted similar relief to actively managed ETFs<sup>7</sup> and index-based ETFs.<sup>8</sup>

The Trust understands that, except as permitted by the relief from Rule 14e-5 requested herein, any person acting as a dealer-manager is required to comply with the requirements of Rule 14e-5.

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<sup>7</sup> See, e.g., the Prior First Trust Letters and the Other Rule 14e-5 Relief, *supra* note 4; and the Grail Letter and the PowerShares Letter, *supra* note 3.

<sup>8</sup> See, e.g., the Class Relief Index ETF Letter, *supra* note 1. In the case of an index-based ETF, the adjustments to the basket would occur as a result of a change in the composition of the relevant index.

IV. CONCLUSION

Based on the foregoing, the Trust respectfully requests that the Commission and the Staff grant the relief requested herein. The forms of relief requested are substantially similar to those actions that the Commission and the Staff have taken in similar circumstances.

Thank you for your consideration of this request. Should you have any questions or require additional information, please call the undersigned at (312) 845-3446 or Felice Foundos at (312) 845-3864.

Very truly yours,

CHAPMAN AND CUTLER LLP

By  \_\_\_\_\_  
Suzanne M. Russell