

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69464; File No. SR-NASDAQ-2013-036)

April 26, 2013

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Relating to the Listing and Trading of the Shares of the First Trust Senior Loan Fund of First Trust Exchange-Traded Fund IV

I. Introduction

On February 21, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the First Trust Senior Loan Fund of First Trust Exchange-Traded Fund IV (“Fund”). On March 7, 2013, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded the original filing. The Commission published for comment in the Federal Register notice of the proposed rule change, as modified by Amendment No. 2, on March 13, 2013.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 2.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares pursuant to Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares.⁴ The Exchange deems the Shares to be

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 69072 (March 7, 2013), 78 FR 16006 (“Notice”).

⁴ Under Nasdaq’s Rules, a Managed Fund Share is a security that (a) represents an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity, that invests in a portfolio of securities

equity securities, rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.⁵

The Shares will be offered by the First Trust Exchange Traded Fund IV ("Trust"), which is organized as a Massachusetts business trust and is registered with the Commission as an investment company.⁶ First Trust Advisors L.P. is the investment adviser ("Adviser") to the Fund. First Trust Portfolios L.P. is the principal underwriter and distributor of the Shares ("Distributor"). The Bank of New York Mellon Corporation will act as the administrator, accounting agent, custodian and transfer agent to the Fund ("Custodian"). The Adviser is affiliated with the Distributor, a broker-dealer. As required by Nasdaq Rule 5735(g),⁷ the Adviser has implemented a firewall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.⁸

selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value. See Nasdaq Rule 5735(c)(1).

⁵ See Notice, supra note 3, 78 FR at 16017.

⁶ The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). See Post-Effective Amendment No. 15 to Registration Statement on Form N-1A for the Trust, dated December 14, 2012 (File Nos. 333-174332 and 811-22559) ("Registration Statement"). In addition, the Exchange represents that the Trust has obtained certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812-13795) ("Exemptive Order").

⁷ Nasdaq Rule 5735(g) also requires that Adviser personnel who make decisions regarding the Fund's portfolio be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.

⁸ Additionally, the Exchange represents that, in the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer 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

Objectives of the Fund

The Fund's primary investment objective is to provide high current income. The Fund's secondary investment objective is the preservation of capital.

The Fund's Principal Investments⁹

In pursuing its investment objective, under normal market conditions,¹⁰ the Fund will seek to outperform a primary and secondary loan index (as described below) by investing at least 80% of its net assets (plus any borrowings for investment purposes) in "Senior Loans."¹¹ It is anticipated that the Fund will invest approximately 50% to 75% of its net assets in Senior Loans that are eligible for inclusion in and meet the liquidity thresholds of the S&P/LSTA U.S. Leveraged Loan 100 Index ("Primary Index") or the Markit iBoxx USD Leveraged Loan Index ("Secondary Index").¹² Each of the Fund's Senior Loan investments is expected to have no less

of material, non-public information regarding such portfolio.

⁹ Additional information regarding the Fund, the Fund's portfolio, and the Shares, including investment strategies, risks, Senior Loan market, Primary and Secondary Indices, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Notice and in the Registration Statement. See supra, notes 3 and 6, respectively.

¹⁰ In the Notice, the term "under normal market conditions" is defined and a description of what the Fund may hold during periods of extreme market disturbance is provided. See Notice, supra note 3, 78 FR at 16007, n.10.

¹¹ The Adviser considers Senior Loans to be first lien senior business loans that typically pay interest at a floating or adjusting rate that is determined periodically at a designated premium above a base lending rate, most commonly the London-Interbank Offered Rate ("LIBOR"). See id. The Fund will invest in Senior Loans that are made predominantly to businesses operating in North America, but may also invest in Senior Loans made to businesses operating outside of North America. See id. Generally, each Senior Loan will be secured by collateral such as accounts receivable; inventory; equipment; real estate; intangible assets such as trademarks, copyrights and patents; and securities of subsidiaries or affiliates. See id. at 16008.

¹² The Primary Index comprises the 100 largest Senior Loans, as measured by the borrowed amounts outstanding; the Secondary Index selects the 100 most liquid Senior Loans in the market. In addition to size, liquidity is also measured, in part, based on the number of market makers who trade a specific Senior Loan and the number and size of transactions

than \$250 million USD par outstanding.

The Fund will primarily invest in securities (including Senior Loans) rated below investment grade.

The Fund's Other Investments

In addition to the principal investments described above, the Fund may invest in:

(1) fixed-rate or floating-rate income-producing securities (including U.S. government debt securities and investment-grade and below-investment-grade corporate debt securities); (2) preferred securities; and (3) securities of other investment companies registered under the 1940 Act.¹³ In addition, the Fund may invest a portion of its assets in exchange-traded pooled investment vehicles (other than investment companies) that invest primarily in securities of the types in which the Fund may invest directly. The Fund may receive equity, warrants, corporate bonds and other similar securities as a result of the restructuring of the debt of an issuer or a reorganization of a senior loan or bond or may acquire such securities together with a high yield bond or senior loan(s) of an issuer. Such investments will be subject to the Fund's investment objectives, restrictions and strategies.

The Fund may invest in secured loans that are not first lien loans or in loans that are unsecured. These loans have the same characteristics as Senior Loans except that such loans are not first in priority of repayment and/or may not be secured by collateral.

in the context of the prevailing bid/offer spread. Markit utilizes proprietary models for the Secondary Index composition and updates to the Secondary Index. The Fund will not seek to track either the Primary or Secondary Index but rather will seek to outperform those indices.

¹³ The equity securities in which the Fund may invest, including securities of other investment companies registered under the 1940 Act, will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group ("ISG"), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.

Fund Investment Limitations

Under normal market conditions, up to 10% of the net assets of the Fund may be denominated in currencies other than the U.S. dollar. The Fund intends to hedge its non-U.S. dollar holdings.¹⁴

The Fund will not invest 25% or more of the value of its total assets in securities of issuers in any one industry.¹⁵

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, junior subordinated loans, and unsecured loans deemed illiquid by the Adviser.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 the Fund 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.

Except for investments in ETFs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S. equity issues.¹⁷ The Fund will not invest in options contracts, futures contracts, or swap agreements.¹⁸

¹⁴ See Notice, supra note 3, 78 FR at 16009.

¹⁵ See id. at 16010.

¹⁶ See id.

¹⁷ See id.

¹⁸ See id.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.¹⁹

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 Act²⁰ and the rules and regulations thereunder applicable to a national securities exchange.²¹ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the 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 notes that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq's Rule 5735.

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,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. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information will be available via Nasdaq proprietary quote and trade services, as well as in

¹⁹ See id.

²⁰ 15 U.S.C. 78f.

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 17 U.S.C. 78f(b)(5).

²³ 15 U.S.C. 78k-1(a)(1)(C)(iii).

accordance with the Unlisted Trading Privileges (“UTP”) and the Consolidated Tape Association (“CTA”) plans for the Shares and any underlying exchange-traded product.²⁴ Intra-day, executable price quotations of the Senior Loans, fixed income securities, and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, if applicable. Intra-day price information is also available through subscription services, such as Bloomberg, Markit, and Thomson Reuters, which can be accessed by authorized participants and other investors.

The Commission 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 NAV of the Fund will be calculated by the Custodian and determined at the close of the regular trading session on the New York Stock Exchange (ordinarily 4:00 p.m., E.T.) on each day that such exchange is open, provided that fixed-income assets (and, accordingly, the Fund’s NAV) may be valued as of the announced closing time for trading in fixed-income instruments on any day that the Securities Industry and Financial Markets Association (or the applicable exchange or market on which the Fund’s investments are traded) announces an early closing time. On each business day, before commencement of trading in Shares in the Regular Market Session²⁵ on the Exchange, the Fund will disclose on the Distributor’s website the identities and

²⁴ See email from Jonathan F. Cayne, Associate General Counsel, The NASDAQ OMX Group, to Christopher Chow, Special Counsel, and Kristie Diemer, Special Counsel, Division of Trading and Markets, Commission, dated April 25, 2013, stating that quotation and last-sale information will be available in accordance with the UTP and the CTA plans for the Shares and any underlying exchange-traded products, as well as via Nasdaq proprietary quote and trade services.

²⁵ See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to

quantities of the portfolio of securities and other held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day assets ("Disclosed Portfolio," as defined in Nasdaq Rule 5735(c)(2)).²⁶ 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. Additionally, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service will be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session.

Trading in Shares will be halted if the circuit breaker parameters in Nasdaq Rule 4120(a)(11) have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which trading in the Shares 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.²⁷ The Adviser is affiliated with a broker-dealer and has implemented a firewall with respect to that broker-dealer regarding access

8 p.m. E.T.).

²⁶ 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"). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. 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.

²⁷ See Nasdaq Rule 5735(d)(2)(B)(ii).

to information concerning the composition and/or changes to the Fund's portfolio.²⁸ The Exchange has represented that S&P and Markit are not broker-dealers or affiliated with a broker-dealer and that each has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Primary Index and Secondary Index, respectively.²⁹

Under normal market conditions, the Fund generally will satisfy the generic fixed income listing requirements in Nasdaq Rule 5705(b)(4) on a continuous basis measured at the time of purchase. The Exchange states that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. Further, the Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal

²⁸ See note 7, *supra* and accompanying text. The Commission notes that 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 Sub-Adviser and their 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

²⁹ See Notice, *supra* note 3, 78 FR at 16018.

securities laws.³⁰ The Commission believes that the Exchange's procedures, combined with the Fund's general adherence to the generic fixed income listing requirements in Nasdaq Rule 5705(b)(4) on a continuous basis measured at the time of purchase are designed to mitigate the potential for price manipulation of the Shares.

In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under Nasdaq Rule 5735.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.³¹

(3) The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by 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 2310, 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

³⁰ See id. at 16017.

³¹ See id.

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 will be in compliance with Rule 10A-3 under the Act.³²

(6) It is anticipated that the Fund, in accordance with its principal investment strategy, will invest approximately 50% to 75% of its net assets in Senior Loans that are eligible for inclusion in and meet the liquidity thresholds of the Primary or the Secondary Indices. Each of the Fund's Senior Loan investments is expected to have no less than \$250 million USD par outstanding. While the Fund may hold a Senior Loan that has defaulted subsequent to its purchase by the Fund, the Adviser does not intend to purchase Senior Loans that are in default.

(7) Under normal market conditions, the Fund would generally satisfy the generic fixed income listing requirements in Nasdaq Rule 5705(b)(4) on a continuous basis measured at the time of purchase.

(8) The Fund will not invest in non-U.S.-registered equity issues (except for underlying ETFs that may hold non-U.S. issues). 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, junior subordinated loans, and unsecured loans deemed illiquid by the Adviser. The Fund will not invest in options contracts, futures contracts, or swap agreements.

(9) The Fund's investments will be consistent with the Fund's investment objectives and will not be used to enhance leverage.

³² See 17 CFR 240.10A-3.

(10) A minimum of 100,000 Shares will be outstanding at the commencement of trading. This approval order is based on all of the Exchange's representations, including those set forth in the Notice.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act³³ and the rules and regulations thereunder applicable to a national securities exchange.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁴ that the proposed rule change (SR-NASDAQ-2013-036), as modified by Amendment No. 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

Kevin M. O'Neill
Deputy Secretary

³³ 15 U.S.C. 78f(b)(5).

³⁴ 15 U.S.C. 78s(b)(2).

³⁵ 17 CFR 200.30-3(a)(12).