

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76202; File No. SR-NYSEArca-2015-77)

October 20, 2015

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the First Trust Heitman Global Prime Real Estate ETF Under NYSE Arca Equities Rule 8.600

I. Introduction

On August 28, 2015, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) 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 Heitman Global Prime Real Estate ETF (the “Fund,”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on September 17, 2015.³ On October 1, 2015, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The Commission received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 75901 (September 11, 2015), 80 FR 55892 (“Notice”).

⁴ In Amendment No. 1, the Exchange: (1) identified the investment objective of the Fund; (2) clarified the scope of the Fund’s permitted investments; (3) modified its description of the Fund’s Share redemption process; (4) supplemented its description of the availability of price information for the Shares and the underlying assets; (5) identified another entity as the administrator, custodian, and transfer agent for the Fund; and (6) made other technical changes. Amendment No. 1 is available at: <http://www.sec.gov/rules/sro/nysearca/2015/34-75901-amendment1.pdf>.

II. The Exchange's Description of the Proposed Rule Change⁵

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares will be offered by First Trust Exchange-Traded Fund IV ("Trust"), a Massachusetts business trust which is registered with the Commission as an open-end management investment company.⁶ First Trust Advisors L.P. ("First Trust" or the "Adviser") will serve as the investment adviser of the Fund. Heitman Real Estate Securities LLC ("Sub-Adviser") will be the sub-adviser to the Fund. Heitman International Real Estate Securities HK Limited and Heitman International Real Estate Securities GmbH ("Sub-Sub-Advisers") will be the sub-sub-advisers to the Fund. First Trust Portfolios L.P. will be the principal underwriter and distributor of the Fund's Shares. Brown Brothers Harriman & Co. (the "BBH") will serve as administrator, custodian and transfer agent for the Fund.

Principal Investments

The Exchange states that, under normal market conditions,⁷ at least 80% of the Fund's net assets in the following U.S. and non-U.S. exchange-traded real estate securities: real estate

⁵ The Commission notes that additional information regarding the Trust, the Fund, its investments, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value ("NAV"), distributions, and taxes, among other things, can be found in the Notice and the Registration Statement, as applicable. See Notice, supra note 3, and Registration Statement, infra note 6.

⁶ The Exchange states that the Trust is registered under the 1940 Act. According to the Exchange, on August 27, 2014, the Trust filed an amendment to the Trust's registration statement on Form N-1A under the Securities Act of 1933 (the "1933 Act") (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-174332 and 811-22559) (the "Registration Statement"). The Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 28468 (October 27, 2008) (File No. 812-13477).

⁷ The term "under normal market conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets

investment trusts (“REITs”), real estate operating companies (“REOCs”) and common stocks or “Depository Receipts” of companies primarily engaged in the real estate industry (collectively, “Real Estate Securities”).⁸ The Fund may invest in non-U.S. securities (including securities of certain non-U.S. companies), which include securities issued or guaranteed by companies organized under the laws of countries other than the United States (including emerging markets). Certain Real Estate Securities in which the Fund invests may be restricted securities (Rule 144A securities).⁹ During the initial invest-up period, the Fund may depart from its principal investment strategies and invest a larger amount or all of its assets in cash equivalents or it may hold cash.

Other Investments

According to the Exchange, the Fund, under normal market conditions, will invest up to 20% of the value of its net assets (plus borrowings for investment purposes) in the following securities and financial instruments described below.

Equity securities, other than Real Estate Securities, in which the Fund will invest may include common and preferred stocks. The Fund may also invest in warrants and rights related to common stocks, preferred equity securities and restricted securities (Rule 144A securities) that are not also Real Estate Securities. The Fund may invest in exchange-traded pooled investment

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.

⁸ The Fund’s investments in Real Estate Securities and certain non-U.S. companies (as referred to below under “Non-Principal Investments”) may be in the form of Depository Receipts, which include American Depository Receipts, Global Depository Receipts, and European Depository Receipts. All Depository Receipts in which the Fund invests will be traded on a U.S. or a non-U.S. exchange.

⁹ Any such Real Estate Securities will be traded on a non-U.S. exchange and will not be traded on a U.S. exchange.

vehicles, open-end or closed-end investment company securities, other exchange-traded funds (“ETFs”) and business development companies (“BDCs”) that invest primarily in securities of the types in which the Fund may invest directly.

The Fund may invest in companies that are considered to be “passive foreign investment companies” (“PFICs”), which are generally certain non-U.S. corporations that receive at least 75% of their annual gross income from passive sources (such as interest, dividends, certain rents and royalties or capital gains) or that hold at least 50% of their assets in investments producing such passive income.

Fixed income investments and cash equivalents held by the Fund may include, the following types of investments: (1) U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers’ acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements, which involve purchases of debt securities with counterparties that are deemed by the Adviser to present acceptable credit risks; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (6) commercial paper, which are short-term unsecured promissory notes, including variable rate master demand notes (direct lending arrangements between the Fund and a corporation) issued by corporations to finance their current operations; (7) shares of money market funds.

The Fund may invest in the following types of non-U.S. fixed income securities (including securities of certain non-U.S. companies): securities issued or guaranteed by

companies organized under the laws of countries other than the United States (including emerging markets), securities issued or guaranteed by foreign, national, provincial, state, municipal or other governments with taxing authority or by their agencies or instrumentalities and debt obligations of supranational governmental entities such as the World Bank or European Union. Non-U.S. securities may also include U.S. dollar-denominated debt obligations, such as “Yankee Dollar” obligations (U.S. dollar-denominated obligations issued in the U.S. capital markets by foreign corporations, banks and governments) of foreign issuers and of supra-national government entities.

The Fund also may invest in forward foreign currency exchange contracts.

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 Act¹⁰ and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹² 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 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 NYSE Arca Equities Rule 8.600 for the Shares to be listed and traded on the Exchange.

¹⁰ 15 U.S.C. 78f.

¹¹ 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).

¹² 15 U.S.C. 78f(b)(5).

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,¹³ 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 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 and the following U.S. exchange-traded equity securities will be available via the Consolidated Tape Association high-speed line, and from the national securities exchange on which they are listed: Real Estate Securities, common stocks, preferred stocks, warrants, rights, pooled investment vehicles, ETFs, closed end investment company securities, BDCs, and PFICs. In addition, the Portfolio Indicative Value (“PIV”) as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated every 15 seconds throughout the Exchange’s Core Trading Session by one or more major market data vendors. On each business day, before commencement of trading in Shares in the Core Trading Session (as defined in NYSE Arca Equities Rule 7.34(a)(2)), each Fund will disclose on its website the Disclosed Portfolio (as defined in NYSE Arca Equities Rule 8.600(c)(2)) that will form the basis for such Fund’s calculation of NAV at the end of the business day.¹⁴ The Fund’s NAV will be determined as of the close of regular trading on the NYSE on each day the NYSE is open for trading. A basket composition file, which will include the security names and share quantities required to be delivered in exchange for the Shares, together with estimates and actual cash

¹³ 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹⁴ On a daily basis, the Fund will disclose on the Fund’s website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund’s portfolio. This information will be publicly available at no charge.

components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange via the National Securities Clearing Corporation. 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 website for the Fund will include a form of the prospectus for the Fund and additional data relating to 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.¹⁵ In addition, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted. The Exchange may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments constituting the Disclosed Portfolio of a Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.¹⁶ Further, the Commission notes that the

¹⁵ See NYSE Arca Equities Rule 8.600(d)(1)(B).

¹⁶ See NYSE Arca Equities Rule 8.600(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 each Fund. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market

Reporting Authority that provides the Disclosed Portfolio of the Fund 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.¹⁷ The Commission notes that the Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange,¹⁸ will communicate as needed regarding trading in the Shares and certain exchange-traded equity securities with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and certain exchange-traded equity securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and certain exchange-traded equity securities from markets and other entities that are members of ISG 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. According to the Exchange, the Adviser, the Sub-Adviser and the Sub-Sub-Advisers are not broker-dealers, but the Adviser is affiliated with First Trust Portfolios L.P., a broker-dealer, and the Sub-Adviser and the Sub-Sub-Advisers are affiliated with Heitman Securities LLC and Heitman UK Limited, each a broker-dealer. The Exchange states that the Adviser, the Sub-Adviser and the Sub-Sub-Advisers have each implemented fire walls with respect to their respective broker-dealer affiliate(s) regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the

conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

¹⁷ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

¹⁸ 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.

Adviser, the Sub-Adviser or either Sub-Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser, sub-adviser or sub-sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Exchange states that it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate 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.

The Exchange deems the Shares to be equity securities, which renders 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 additional representations, including:

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.
- (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 FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. 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 federal securities laws applicable to trading on the Exchange.
- (4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin of the special

characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV will be disseminated; (e) the requirement that ETP Holders 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 will be in compliance with Rule 10A-3¹⁹ under the Act, as provided by NYSE Arca Equities Rule 5.3.
- (6) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.
- (7) Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the 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.

¹⁹ 17 CFR 240.10A-3.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act²⁰ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 is consistent with the Act. 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2015-77 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEArca-2015-77. This file number should be included on the subject line if e-mail 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 website (<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

²⁰ 15 U.S.C. 78f(b)(5).

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2015-77 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice in the Federal Register. Amendment No. 1 supplements the proposed rule change by, among other things, clarifying the scope of the Fund's permitted investments and adding additional information about the availability of prices for the Shares and underlying assets. This new information aided the Commission in evaluating the likelihood of effective arbitrage in the Shares. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²¹ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

²¹ 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-NYSEArca-2015-77), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

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

Brent J. Fields
Secretary

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).