SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67001; File No. SR-NYSEArca-2012-21)

May 16, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of the First Trust North American Infrastructure Fund under NYSE Arca Equities Rule 8.600

I. Introduction

On March 13, 2012, 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" or "Exchange Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the First Trust North American Infrastructure Fund ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on April 3, 2012.[3] The Commission received no comments on the proposed rule change. On May 16, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] This order grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 66669 (March 28, 2012), 77 FR 20079 ("Notice").

4 In Amendment No. 1, the Exchange proposes to remove references to the Exemptive Order (as defined herein) to clarify that the percentage limitations with respect to the Fund's investments in certain derivative instruments are to be imposed by the Fund, and are not specifically imposed under the Exemptive Order. This technical amendment does not require notice and comment as it did not materially affect the substance of the proposed rule change or raise any unique or novel regulatory issues.

Exchange. The Shares will be offered by First Trust Exchange-Traded Fund IV (“Trust”),[5] which is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company. The investment adviser to the Fund will be First Trust Advisors L.P. (“Adviser” or “First Trust”). Energy Income Partners LLC will serve as investment sub-adviser to the Fund (“Sub-Adviser”) and provide day-to-day portfolio management of the Fund. First Trust Portfolios L.P. will be the principal underwriter and distributor of the Fund’s Shares. Bank of New York Mellon will serve as administrator, custodian, and transfer agent for the Fund. The Exchange states that the Adviser and Sub-Adviser are each affiliated with a broker-dealer and, as such, represents that each of the Adviser and Sub-Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund’s portfolio.[6]

First Trust North American Infrastructure Fund

The Fund’s investment objective is to seek total return with an emphasis on current distributions and dividends paid to shareholders. Under normal market conditions,[7] the Fund

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5 The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On July 19, 2011, the Trust filed with the Commission a registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”) and under the 1940 Act relating to the Fund (File Nos. 333-174332 and 811-22559) (“Registration Statement”). In addition, 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) (“Exemptive Order”).

6 See NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser or the Sub-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 of material non-public information regarding such portfolio.

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 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

will invest at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in exchange-traded equity securities of companies domiciled in the United States or Canada and deemed to be engaged in the energy infrastructure segment of the energy and utilities sectors. Equity securities include common stocks; preferred securities; warrants to purchase common stocks or preferred securities; securities convertible into common stocks or preferred securities; and other securities with equity characteristics. Such securities may include depositary receipts, master limited partnerships ("MLPs"), MLP I-shares ("I-Shares") (as described below), MLP subordinated units (as described below), securities of pipeline and power utility companies, and securities of Canadian energy infrastructure companies and Canadian Energy Infrastructure Trusts[8] ("CEITs"). The Sub-Adviser's priority will be to focus on steady fee-for-service income and will limit the cyclical energy exposure of the portfolio in order to reduce the volatility of returns.

The Fund may invest in U.S. dollar-denominated, exchange-listed depositary receipts and U.S. dollar-denominated foreign (primarily Canadian) equity securities.[9] The Fund's

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God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

8 CEITs are Canadian trusts that own or invest in companies engaged in activities in the energy infrastructure sector, including the exploration, mining, production, processing, transportation and storage of energy-related resources. An investment in units of CEITs involves risks which differ from an investment in common stock of a corporation. CEITs generally pass revenue on to unit holders rather than reinvesting in the business, which may lead to the sacrifice of potential growth. CEITs generally do not guarantee minimum distributions or return of capital. If the assets underlying a CEIT do not perform as expected, the CEIT may reduce or eliminate distributions. The declaration of such distributions generally depends upon various factors, including the operating performance and financial condition of the CEITs and general economic conditions.

9 The foreign equity securities in which the Fund may invest, including any Depositary Receipts (as defined herein) and/or New York Shares and Global shares, as described herein, 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

investments may include American Depositary Receipts ("ADRs"), Global Depositary Receipts ("GDRs"), European Depositary Receipts ("EDRs") or other depositary receipts (collectively "Depositary Receipts"), or New York Shares or Global shares.[10]

The Fund may invest in MLPs, which are limited partnerships whose shares (or common units) are listed and traded on a U.S. securities exchange. To qualify to be treated as a partnership for federal income tax purposes, such an MLP must receive at least 90% of its income from qualifying sources such as natural resource activities. Natural resource activities include the exploration, development, mining, production, processing, refining, transportation, storage, and marketing of mineral or natural resources.[11]

The Fund may invest in Energy MLPs, which can generally be classified as Midstream

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sharing agreement with the Exchange.

10 ADRs are receipts typically issued by an American bank or trust company that evidence ownership of underlying securities issued by a foreign corporation. EDRs are receipts issued by a European bank or trust company evidencing ownership of securities issued by a foreign corporation. New York Shares are typically issued by a company incorporated in the Netherlands and represent a direct interest in the company. GDRs are receipts issued throughout the world that evidence a similar arrangement. ADRs, EDRs, and GDRs may trade in foreign currencies that differ from the currency the underlying security for each ADR, EDR, or GDR principally trades in. Generally, ADRs and New York Shares, in registered form, are designed for use in the U.S. securities markets. EDRs, in registered form, are used to access European markets. GDRs, in registered form, are traded both in the United States and in Europe and are designed for use throughout the world. Global shares are the actual (ordinary) shares of a non-U.S. company which trade both in the home market and the United States. Global shares are represented by the same share certificate in the United States and the home market. Separate registrars in the United States and the home country are maintained. In most cases, purchases occurring on a U.S. exchange would be reflected on the U.S. registrar. Global shares may also be eligible to list on exchanges in addition to the United States and the home country.

11 MLPs generally have two classes of owners, the general partner and limited partners. The general partner, which is generally a major energy company, investment fund, or the management of the MLP, typically controls the MLP through a 2% general partner equity interest in the MLP plus common units and subordinated units. Limited partners own the remainder of the partnership, through ownership of common units, and have a limited role in the partnership's operations and management.

MLPs, Propane MLPs, and Coal MLPs.

Midstream MLP natural gas services include the treating, gathering, compression, processing, transmission, and storage of natural gas and the transportation, fractionation, and storage of natural gas liquids (primarily propane, ethane, butane, and natural gasoline). Midstream MLP crude oil services include the gathering, transportation, storage, and terminalling of crude oil. Midstream MLP refined petroleum product services include the transportation (usually via pipelines, barges, rail cars, and trucks), storage, and terminalling of refined petroleum products (primarily gasoline, diesel fuel, and jet fuel) and other hydrocarbon by-products. Midstream MLPs may also operate ancillary businesses, including the marketing of the products and logistical services.

Propane MLP services include the distribution of propane to homeowners for space and water heating and to commercial, industrial, and agricultural customers. Propane serves approximately 3% of the household energy needs in the United States, largely for homes beyond the geographic reach of natural gas distribution pipelines. Volumes are weather dependent, and a majority of annual cash flow is earned during the winter heating season (October through March).

Coal MLP services include the owning, leasing, managing, production, and sale of coal and coal reserves. Electricity generation is the primary use of coal in the United States. Demand for electricity and supply of alternative fuels to generators are the primary drivers of coal demand.

The Fund may invest in MLP subordinated units, which are typically issued by MLPs to their original sponsors, such as their founders, corporate general partners of MLPs, entities that sell assets to the MLP, and institutional investors.

The Fund may invest in I-Shares, which represent an ownership interest issued by an affiliated party of an MLP. The MLP affiliate uses the proceeds from the sale of I-Shares to purchase limited partnership interests in the MLP in the form of i-units. I-units have similar features as MLP common units in terms of voting rights, liquidation preference, and distributions. However, rather than receiving cash, the MLP affiliate receives additional i-units in an amount equal to the cash distributions received by MLP common units. Similarly, holders of I-Shares will receive additional I-Shares, in the same proportion as the MLP affiliates' receipt of i-units, rather than cash distributions. I-Shares themselves have limited voting rights, which are similar to those applicable to MLP common units. I-Shares are listed and traded on the New York Stock Exchange LLC ("NYSE") and NYSE Amex LLC.

The Fund may invest in securities of other U.S. and Canadian-listed and traded open-end or closed-end investment companies, including exchange-traded funds that are registered under the 1940 Act ("ETFs"), such as ETFs listed on the Exchange under NYSE Arca Equities Rules 5.2(j)(3) and 8.600, that invest primarily in securities of the types in which the Fund may invest directly. The Fund also may invest in other types of U.S. exchange-traded products, such as exchange traded notes ("ETNs") and exchange-traded pooled investment vehicles (collectively, with ETNs, "Underlying ETPs").[12]

The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by such ETFs and their sponsors from the

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12 Underlying ETPs, which will be listed on a national securities exchange, include the following: Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); and closed-end funds.

Commission. Securities of other investment companies may be leveraged; such investments will not be used to enhance leverage and will be consistent with the Fund's investment objective.

Under normal market conditions, the Fund will invest substantially all of its assets to meet its investment objective. The Fund may invest the remainder of its assets in securities with maturities of less than one year or cash equivalents, or it may hold cash, as described below. The percentage of the Fund invested in such holdings will vary and depend on several factors, including market conditions.

Other Investments

Cash Equivalents and Short-Term Investments. For temporary defensive purposes and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies and invest part or all of its assets in securities with maturities of less than one year or cash or cash equivalents. The Fund may adopt a defensive strategy when the portfolio managers believe securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances. The Fund may, without limit as to percentage of assets, purchase U.S. Government securities or short-term debt securities[13] to keep cash on hand fully invested or for temporary defensive purposes. The use of

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13 Short-term debt securities are securities from issuers having a long-term debt rating of at least A by Standard & Poor's Ratings Group, Moody's Investors Service, Inc., or Fitch, Inc. and having a maturity of one year or less, and are defined to include, without limitation, the following:

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. In such an

temporary investments will not be a part of a principal investment strategy of the Fund. The Fund may invest in shares of money market funds to the extent permitted by the 1940 Act.

Investments in Derivatives. The Fund may invest up to 35% of its net assets in futures ("Futures" or "Futures Contracts"), interest rate swaps, total return swaps, non-U.S. currency swaps, credit default swaps, options, and other derivative instruments to seek to enhance return, to hedge some of the risks of their investments in securities, as a substitute for a position in the underlying asset, to reduce transaction costs, to maintain full market exposure (which means to adjust the characteristics of their investments to more closely approximate those of the markets in which they invest), to manage cash flows, to limit exposure to losses due to changes to non-U.S. currency exchange rates, or to preserve capital. The Fund, under normal market conditions, will not invest more than 20% of its net assets in such instruments. In connection with hedging

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action, at the time the Fund purchases the security, it will simultaneously agree to resell and redeliver the security to the seller, who also simultaneously will agree to buy back the security at a fixed price and time. The Fund may enter into repurchase agreements only with respect to obligations of the U.S. Government, its agencies, or instrumentalities; certificates of deposit; or bankers acceptances in which the Fund may invest. In addition, the Fund may only enter into repurchase agreements where the market value of the purchased securities/collateral equals at least 100% of principal including accrued interest and is marked-to-market daily. The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by First Trust to present minimal credit risks in accordance with criteria established by the Trust's Board of Trustees. First Trust will review and monitor the creditworthiness of such institutions. First Trust will monitor the value of the collateral at the time the action is entered into and at all times during the term of the repurchase agreement. First Trust will do so in an effort to determine that the value of the collateral always equals or exceeds the agreed-upon repurchase price to be paid to the Fund.

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. There may be penalties for the early withdrawal of such time deposits, in which case the yields of these investments will be reduced.

6. Commercial paper, which are short-term unsecured promissory notes. The Fund will not invest in any master demand notes**.**

activities in which the Fund may engage, First Trust may cause the Fund to utilize a variety of financial instruments, including options, forward contracts, Futures Contracts, and options on Futures Contracts to attempt to hedge the Fund's holdings.[14] The use of Futures is not a part of a principal investment strategy of the Fund.[15]

The Fund may use derivative investments to hedge against interest rate and market risks. The Fund may engage in various interest rate and currency hedging transactions, including buying or selling options or entering into other transactions including forward contracts, swaps, and other derivatives transactions. The Fund may also engage in certain transactions intended to hedge its exposure to currency risks due to foreign currency denominated investments. The Fund may sell covered calls on equity positions in the portfolio in order to enhance its income.

The Fund may purchase stock index options, sell stock index options in order to close out existing positions, and/or write covered options on stock indices for hedging purposes. Stock index options are put options and call options on various stock indices. The Fund may enter into Futures Contracts, including index Futures as a hedge against movements in the equity markets, in order to hedge against changes on securities held or intended to be acquired by the Fund or for other purposes permissible under the Commodity Exchange Act ("CEA"). The Fund's hedging

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[14] The Trust has filed a notice of eligibility for exclusion from the definition of the term "commodity pool operator" with the National Futures Association. The Fund will not enter into Futures and options transactions if the sum of the initial margin deposits and premiums paid for unexpired options exceeds 5% of the Fund's total assets.

[15] Hedging or derivative instruments on securities generally will be used to hedge against price movements in one or more particular securities positions that the Fund owns or intends to acquire. Such instruments may also be used to "lock-in" realized but unrecognized gains in the value of portfolio securities. Hedging instruments on stock indices, in contrast, generally are used to hedge against price movements in broad equity market sectors in which the Fund has invested or expects to invest. The use of hedging instruments is subject to applicable regulations of the Commission, the several options and Futures exchanges upon which they are traded, the Commodity Futures Trading Commission ("CFTC") and various state regulatory authorities.

may include sales of Futures as an offset against the effect of expected declines in stock prices and purchases of Futures as an offset against the effect of expected increases in stock prices. The Fund will not enter into Futures Contracts which are prohibited under the CEA and will, to the extent required by regulatory authorities, enter only into Futures Contracts that are traded on national Futures exchanges and are standardized as to maturity date and underlying financial instrument. The principal interest rate Futures exchanges in the United States are the Chicago Board of Trade and the Chicago Mercantile Exchange.

The Fund may also purchase or write put and call options on Futures Contracts and enter into closing transactions with respect to such options to terminate an existing position.

The Fund may use options on Futures Contracts in connection with hedging strategies. Generally, these strategies would be applied under the same market and market sector conditions in which the Fund uses put and call options on securities or indices.

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.[16]

The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction does not apply to securities issued by energy infrastructure companies or obligations issued or guaranteed by the U.S. Government, its agencies, or instrumentalities. Accordingly, the Fund will concentrate its investments in energy infrastructure companies.

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[16] See supra note 9.

The Fund may hold illiquid securities (i.e., securities that are not readily marketable). For purposes of this restriction, illiquid securities include, but are not limited to, restricted securities (securities the disposition of which is restricted under the federal securities laws), securities that may only be resold pursuant to Rule 144A under the Securities Act, and repurchase agreements with maturities in excess of seven days. However, the Fund will not hold illiquid securities if, as a result, such securities would comprise more than 15% of the value of the Fund's net assets.

The Fund intends to qualify annually and to elect to be treated as a regulated investment company under the Internal Revenue Code of 1986, as amended.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Exchange Act,[17] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value ("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.

Additional information regarding the Trust, Fund, Shares, Fund's investment strategies, risks, creation and redemption procedures, fees, portfolio holdings and disclosure policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice and/or the Registration Statement, as

[17] 17 CFR 240.10A-3.

applicable.[18]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with the requirements of Section 6 of the Act[19] and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with the requirements of 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 NYSE Arca Equities Rule 8.600 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 to assure the availability to brokers, dealers, and investors of information

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18 See Notice and Registration Statement, supra notes 3 and 5, 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).

with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[23] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the 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 the Fund's calculation of NAV at the end of the business day.[24] The NAV of the Fund will be determined as of the close of trading (normally 4:00 p.m., Eastern Time) on each day the NYSE is open for business. 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. In addition, price information for the portfolio securities held by the Fund will be readily available from the securities exchanges trading such securities, automated quotation

[23] According to the Exchange, several major market data vendors display and/or make widely available Portfolio Indicative Values published on CTA or other data feeds. The price of a non-U.S. security that is primarily traded on a non-U.S. exchange will be updated, using the last sale price, every 15 seconds throughout the trading day, provided that, upon the closing of such non-U.S. exchange, the closing price of the security, after being converted to U.S. dollars, will be used. Furthermore, in calculating the Portfolio Indicative Value of the Fund's Shares, exchange rates may be used throughout the day (9:00 a.m. to 4:15 p.m., Eastern Time) that may differ from those used to calculate the NAV per Share of the Fund and, consequently, may result in differences between the NAV and the Portfolio Indicative Value.

[24] On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information on the Fund's website: ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The website information will be publicly available at no charge.

systems, published or other public sources, or online information services such as Bloomberg or Reuters. The Fund's website 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.[25] 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 the 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 comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[26] 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 Exchange states that it has a

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

26 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 other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the 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 conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

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

general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that the Adviser and Sub-Adviser are each affiliated with a broker-dealer, and the Adviser and Sub-Adviser have each implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.[28]

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 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's surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading

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[28] See supra note 6. 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.

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 Equity Trading Permit Holders ("ETP Holders") in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares in Creation Unit aggregations (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 Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is 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-3 under the Exchange Act,[29] as provided by NYSE Arca Equities Rule 5.3.

(6) The foreign equity securities in which the Fund may invest, including any Depositary Receipts, New York Shares, and Global shares, will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group, which includes all U.S. national securities exchanges and certain foreign

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[29] 17 CFR 240.10A-3.

exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(7) While the Fund may invest in securities of other investment companies that are leveraged, such investments will not be used to enhance leverage and will be consistent with the Fund's investment objective.

(8) The Fund may invest up to 35% of its net assets in Futures Contracts, interest rate swaps, total return swaps, non-U.S. currency swaps, credit default swaps, options, and other derivative instruments to seek to enhance return, to hedge some of the risks of their investments in securities, as a substitute for a position in the underlying asset, to reduce transaction costs, to maintain full market exposure, to manage cash flows, to limit exposure to losses due to changes to non-U.S. currency exchange rates, or to preserve capital. The Fund, under normal market conditions, will not invest more than 20% of its net assets in such instruments.

(9) The Fund will not hold illiquid securities, which include restricted securities, Rule 144A securities, and repurchase agreements with maturities in excess of seven days, if, as a result, such securities would comprise more than 15% of the value of the Fund's net assets.

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

This approval order is based on all of the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act[30] and the

[30] 15 U.S.C. 78f(b)(5).

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,[31] that the proposed rule change (SR-NYSEArca-2012-21), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill
Deputy Secretary

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31 15 U.S.C. 78s(b)(2).

32 17 CFR 200.30-3(a)(12).