

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68458; File No. SR-NYSEArca-2012-139)

December 18, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to List and Trade First Trust Preferred Securities and Income ETF under NYSE Arca Equities Rule 8.600

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on December 6, 2012, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”): First Trust Preferred Securities and Income ETF. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the First Trust Preferred Securities and Income ETF (“Fund”) under NYSE Arca Equities Rule 8.600,³ which governs the listing and trading of Managed Fund Shares.⁴ The Shares will be offered by First Trust Exchange-Traded Fund III (“Trust”), which is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company.⁵ The

³ The Commission previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR-NYSEArca-2009-55) (order approving listing of Dent Tactical ETF); 62502 (July 15, 2010), 75 FR 42471 (July 21, 2010) (SR-NYSEArca-2010-57) (order approving listing of AdviserShares WCM/BNY Mellon Focused Growth ADR ETF); and 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR-NYSEArca-2010-79) (order approving listing of Cambria Global Tactical ETF).

⁴ A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

⁵ The Trust is registered under the 1940 Act. On September 23, 2011, the Trust filed with the Commission a registration statement on Form N-1A under the Securities Act of 1933 and under the 1940 Act relating to the Fund (File Nos. 333-176976 and 811-22245) (“Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the 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. 30029 (April 10, 2012) (File No. 812-13795) (“Exemptive Order”).

investment adviser to the Fund is First Trust Advisors L.P. (“Adviser” or “First Trust”). Stonebridge Advisors LLC will serve as investment sub-adviser to the Fund (“Sub-Adviser”) and will provide day-to-day portfolio management of the Fund. First Trust Portfolios L.P. (“Distributor”) will be the principal underwriter and distributor of the Fund’s Shares. Brown Brothers Harriman & Co. (“Administrator” or “Custodian”) will serve as administrator, custodian, and transfer agent for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund’s portfolio.⁶ Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to

⁶ 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.

NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is affiliated with the Distributor, a broker-dealer, and the Sub-Adviser also is affiliated with a broker-dealer. The Adviser and Sub-Adviser each has implemented a fire wall with respect to its respective broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. 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.

According to the Registration Statement, the Fund’s objective will be to provide current income and total return. Under normal market conditions,⁷ the Fund will invest at least 80% of its net assets (including investment borrowings) in preferred securities (“Preferred Securities”) and income-producing debt securities (“Income Securities”).⁸ The Adviser represents that

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

⁸ The risks and potential rewards of investing in the Fund may at times be similar to the risks and potential rewards of investing in both equity funds and bond funds. Certain of the Preferred Securities in which the Fund will invest will be traditional preferred stocks which issue dividends that qualify for the dividend received deduction under which “qualified” domestic corporations are able to exclude a percentage of the dividends received from their taxable income. Certain of the Preferred Securities in which the Fund will invest will be preferred stock that does not issue dividends that qualify for the

initially at least 50% of the Fund's net assets invested in Preferred Securities and 50% of the Income Securities held by the Fund will be exchange-listed.⁹ However, the Fund reserves the right to reduce the percentage of assets that are exchange-listed. Preferred Securities held by the Fund generally pay fixed or adjustable-rate distributions to investors and have preference over common stock in the payment of distributions and the liquidation of a company's assets, but are generally junior to all forms of the company's debt, including both senior and subordinated debt. For purposes of the 80% test set forth above, Income Securities consist of both foreign and domestic debt instruments, including corporate bonds, high yield bonds, convertible securities, and contingent convertible capital securities. In addition, for purposes of the 80% test set forth above, securities of other open-end funds, closed-end funds, or exchange-traded funds ("ETFs") registered under the 1940 Act¹⁰ that invest primarily in Preferred Securities or Income Securities will be deemed to be Preferred Securities or Income Securities, respectively. The Adviser

dividends received deduction for eligible investors ("non-DRD preferred stock") that do not qualify for the dividends received deduction or issue qualified dividend income. As described in the Registration Statement, hybrid preferred securities, another type of Preferred Securities, are typically junior and fully subordinated liabilities of an issuer or the beneficiary of a guarantee that is junior and fully subordinated to the other liabilities of the guarantor.

⁹ The foreign equity securities, including preferred, hybrid-preferred, and contingent convertible capital, securities in which the Fund may invest 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. See note 25, *infra*.

¹⁰ For purposes of this filing, ETFs, which will be listed on a national securities exchange, include the following: Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). 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 certain ETFs and their sponsors from the Commission. The Fund will not invest in leveraged, inverse, or leveraged inverse ETFs.

represents that at least 80% of the Preferred Securities and Income Securities held by the Fund will have a minimum original principal amount outstanding of \$100 million or more. In addition, the Fund's portfolio will be comprised of a minimum of 13 non-affiliated issuers.

As stated above, the Fund may invest in a variety of debt securities, including corporate debt securities.¹¹ The broad category of corporate debt securities includes debt issued by U.S. and non-U.S. companies of all kinds, including those with small-, mid-, and large-capitalizations.¹² Corporate debt may carry fixed or floating rates of interest.

Initially, the Fund will invest at least 80% of the Fund's net assets in Income Securities of an issuing firm when the issuing firm ("issuer") has a long-term issuer credit rating of investment grade at the time of the investment. However, the Fund reserves the right to reduce the percentage of assets invested in investment grade issuers. "Investment grade" is defined as those issuers that have a long-term credit rating of "BBB-" or higher by Standard & Poor's Rating Group, a division of McGraw Hill Companies, Inc. ("S&P"), or "Baa3" or higher by Moody's Investors Service, Inc. ("Moody's"), or comparably rated by another nationally recognized statistical rating organization ("NRSRO"). The Fund may also invest in securities that are unrated by an NRSRO if such securities are of comparable credit quality. Comparable credit quality of securities that are unrated by an NRSRO will be determined by the Sub-Adviser based

¹¹ As described in the Registration Statement, corporate debt securities are fixed-income securities issued by businesses to finance their operations. Notes, bonds, debentures, and commercial paper are the most common types of corporate debt securities, with the primary difference being their maturities and secured or unsecured status. Certain debt securities held by the Fund may include debt instruments that are similar in many respects to preferred securities.

¹² Under normal market conditions, at least 80% of the Fund's investments in U.S. corporate bonds must have \$100 million or more par amount outstanding to be considered as an eligible investment and a non-U.S. corporate bond must have \$200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment. Economic and other conditions may, from time to time, lead to a decrease in the average par amount outstanding of bond issuances.

on fundamental credit analysis of the unrated issuer and comparable NRSRO rated peer issuers of the same industry sector. On a best efforts basis, the Sub-Adviser will attempt to make a rating determination based on publicly available data. Factors taken into consideration in determining the comparable credit quality of the unrated issuer will be company leverage, capital structure, liquidity, funding, sustainability of cash flows, earnings quality, market position, and asset quality. In the event that a security is rated by multiple NRSROs and receives divergent ratings, the Fund will treat the issuing firm as being rated in the highest rating category received from an NRSRO.

Initially, the Fund may invest up to 20% of the Fund's net assets in Income Securities issued by below-investment grade issuers if that security has acceptable credit quality and attractive relative value. However, the Fund reserves the right to increase the percentage of assets invested in below-investment grade securities. "Below investment grade" is defined as those issuers that have a long-term credit rating of "BBB-" or lower by "S&P," or "Baa3" or lower by Moody's, or comparably rated by another NRSRO. The Fund may also invest in securities that are unrated by an NRSRO if such securities are of comparable credit quality as determined by the Sub-Adviser.

The Fund intends to invest at least 25% of its assets in securities of financial companies. Financial companies include, but are not limited to, companies involved in activities such as banking, mortgage finance, consumer finance, specialized finance, investment banking and brokerage, asset management and custody, corporate lending, insurance and financial investment, and real estate, including but not limited to real estate investment trusts ("REITs").

Other Investments

While the Fund, under normal market conditions, will invest at least 80% of its net assets (including investment borrowings) in Preferred Securities and Income Securities, the Fund also may invest the remainder of its assets in other investments, as described below.

Normally, the Fund may invest up to 15% of its net assets in securities with maturities of less than one year or cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings will vary and depend on several factors, including market conditions. 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 these securities or it may hold cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Sub-Adviser or the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

The Fund may also invest in U.S. government securities¹³ or short-term debt securities¹⁴ to keep cash on hand fully invested or for temporary defensive purposes. Short-term debt

¹³ U.S. government securities include U.S. Treasury obligations and securities issued or guaranteed by various agencies of the U.S. government, or by various instrumentalities which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the “full faith and credit” of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

¹⁴ Short-term debt securities 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. Such certificates are for a definite period of time, earn a specified rate of return, and are normally negotiable. If such certificates of

securities are securities from issuers having a long-term debt rating of at least A by S&P Ratings, Moody's, or Fitch, Inc. and having a maturity of one year or less. The use of temporary investments is not a part of the principal investment strategy of the Fund.

The Fund may also invest in senior loans, second lien loans, loan participations, payment-in-kind securities, zero coupon bonds, bank certificates of deposit, fixed-time deposits, bankers' acceptances, U.S. government securities, or fixed income securities issued by non-U.S. governments denominated in U.S. dollars.

The Fund may invest in warrants. Warrants acquired by the Fund entitle it to buy common stock from the issuer at a specified price and time. They do not represent ownership of the securities but only the right to buy them. Warrants are subject to the same market risks as

deposit are non-negotiable, they will be considered illiquid securities and be subject to the Fund's 15% restriction on investments in illiquid securities.

- (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 action, at the time the Fund purchases the security, it simultaneously agrees to resell and redeliver the security to the seller, who also simultaneously agrees to buy back the security at a fixed price and time.
- (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 issued by corporations to finance their current operations. Master demand notes are direct lending arrangements between the Fund and a corporation. There is no secondary market for the notes, and they will be considered illiquid securities and be subject to the Fund's 15% restriction on investments in illiquid securities. However, they are redeemable by the Fund at any time. The Fund's Sub-Adviser will consider the financial condition of the corporation (e.g., earning power, cash flow, and other liquidity ratios) and will continuously monitor the corporation's ability to meet all of its financial obligations, because the Fund's liquidity might be impaired if the corporation were unable to pay principal and interest on demand. The Fund may only invest in commercial paper rated A-2 or higher by S&P Ratings, Prime-2 or higher by Moody's, or F2 or higher by Fitch, Inc.

stocks, but may be more volatile in price. The Fund’s investment in warrants will not entitle it to receive dividends or exercise voting rights and will become worthless if the warrants cannot be profitably exercised before their expiration date.

The Fund may invest in other pooled investment vehicles and business development companies that are exchange listed and that invest primarily in securities of the types in which the Fund may invest directly.

Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements.

The Fund will not take short positions in securities (“short sales”).

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 (1) non-negotiable certificates of deposit and master demand notes,¹⁵ (2) Rule 144A securities, and (3) senior loans, second lien loans, and loan participation interests. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund’s net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.¹⁶

¹⁵ See note 14, *supra*.

¹⁶ The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding “Restricted Securities”); Investment Company Act Release No. 18612 (March 12, 1992),

The Fund will be classified as “non-diversified” under the 1940 Act and as a result may invest a relatively high percentage of its assets in a limited number of issuers. The Fund will only be limited as to the percentage of its assets which may be invested in the securities of any one issuer by the diversification requirements imposed by the Internal Revenue Code of 1986, as amended (“Code”).¹⁷

Other than financial companies, 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 obligations issued or guaranteed by the U.S. Government, its agencies, or instrumentalities.¹⁸

The Fund intends to qualify annually and to elect to be treated as a regulated investment company (“RIC”) under the Code.¹⁹

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

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

57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund’s portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); and Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

¹⁷ See 26 U.S.C. 851.

¹⁸ See Form N-1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, e.g., Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

¹⁹ 26 U.S.C. 851.

will be in compliance with Rule 10A-3 under the Exchange Act,²⁰ as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares 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.

Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis, at NAV, only in large specified blocks each consisting of 50,000 Shares (each such block of Shares, a “Creation Unit”). The consideration for purchase of Creation Unit aggregations 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 determined by First Trust (“Deposit Securities”) per Creation Unit aggregation generally conforming to holdings of the Fund (“Fund Securities”) and generally an amount of cash (“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 aggregation of the Fund.

The Custodian, through the National Securities Clearing Corporation (“NSCC”), will make available on each business day, prior to the opening of business of the New York Stock Exchange (“NYSE”) (currently 9:30 a.m., Eastern Time (“E.T.”)), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund.

²⁰ 17 CFR 240.10A-3.

Such Fund Deposit will be applicable, subject to any adjustments as described below, in order to effect creations of Creation Unit aggregations of the Fund until such time as the next-announced composition of the Deposit Securities is made available.

In order to be eligible to place orders with the Distributor and to create or redeem a Creation Unit aggregation of the Fund, an entity must be an authorized participant, and must have executed an agreement with the Distributor and transfer agent, with respect to creations and redemptions of Creation Unit aggregations, and have international operational capabilities.

Fund Shares may be redeemed only in Creation Unit aggregations at their NAV next determined after receipt of a redemption request in proper form by the Fund through the transfer agent and only on a business day. The Fund will not redeem Shares in amounts less than Creation Unit aggregations.

The Custodian, through the NSCC, will make available prior to the opening of business on the NYSE (currently 9:30 a.m., E.T.) on each business day, the identity of the Fund Securities that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Unit aggregations.

All orders to create or redeem Creation Unit aggregations must be received by the transfer agent no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.), in each case on the date such order is placed in order for creation or redemption of Creation Unit aggregations to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

The Fund's NAV will be determined as of the close of trading (normally 4:00 p.m., E.T.) on each day the NYSE is open for business. NAV will be calculated for the Fund by taking the

market price of the Fund's total assets, including interest or dividends accrued but not yet collected, less all liabilities, and dividing such amount by the total number of Shares outstanding. The result, rounded to the nearest cent, will be the NAV per Share.

The Fund's investments will be valued at market value or, in the absence of market value with respect to any portfolio securities, at fair value in accordance with valuation procedures adopted by the Trust's Board of Trustees and in accordance with the 1940 Act.

Availability of Information

The Fund's website (www.ftportfolios.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),²¹ and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. 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.²²

²¹ The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

²² Under accounting procedures 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"). Accordingly, the Fund will be able to disclose at the beginning of the business day the

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

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for the Fund’s Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the NSCC. The basket represents one Creation Unit of the Fund.

Information regarding the intra-day value of the Shares of the Fund (the “indicative optimized portfolio value” or “IOPV”), which is the Portfolio Indicative Value (“PIV”) 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 The dissemination of the IOPV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day. The IOPV should not be viewed as a “real-time” update of the NAV per Share of the Fund because the IOPV may not be calculated in the same manner as the NAV, which is computed once a day, generally at the end of the business day. The price of a non-U.S. security that is primarily traded on a non-U.S. exchange shall be updated, using the last sale price, every 15 seconds throughout the trading day, provided, that

portfolio that will form the basis for the NAV calculation at the end of the business day.

²³ Currently, it is the Exchange’s understanding that several major market data vendors display and/or make widely available IOPVs taken from the Consolidated Tape Association (“CTA”) or other data feeds.

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 IOPV of the Fund's Shares, exchange rates may be used throughout the day (9:00 a.m. to 4:15 p.m., E.T.) 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 IOPV.

The Adviser represents that the Trust, First Trust, and BNY will not disseminate non-public information concerning the Trust and the Fund.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and the Trust's Form N-CSR and Form N-SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's website at www.sec.gov. 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. Quotation and last-sale information for the Shares will be available via the CTA high-speed line. The intra-day, closing, and settlement prices of the portfolio securities and other instruments will be also readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes is included in the Registration Statement. All terms relating to the Fund

that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.²⁴ 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. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. 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.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m., E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01,

²⁴ See NYSE Arca Equities Rule 7.12, Commentary .04.

with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. 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 securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁵ Initially, at least 50% of the Fund's net assets invested in Preferred Securities and Income Securities will be exchange-listed and such exchanges will be members of ISG or parties to a comprehensive surveillance sharing agreement with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

²⁵ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. See note 9, *supra*.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (“ETP”) Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) 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; (3) 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; (4) how information regarding the PIV is disseminated; (5) 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 (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)²⁶ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove

²⁶ 15 U.S.C. 78f(b)(5).

impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Under normal market conditions, the Fund will invest at least 80% of its net assets (including investment borrowings) in Preferred Securities and Income Securities. The Adviser represents that initially at least 50% of the Fund's net assets invested in Preferred Securities and 50% of the Income Securities held by the Fund will be exchange-listed. The foreign equity securities, including preferred, hybrid-preferred, and contingent convertible capital, securities in which the Fund may invest will be limited to securities that trade in markets that are members of the ISG. Initially, the Fund will invest at least 80% of the Fund's net assets in Income Securities of an issuing firm when the issuer has a long-term issuer credit rating of investment grade at the time of the investment. Under normal market conditions, at least 80% of the Fund's investments in US corporate bonds must have \$100 million or more par amount outstanding to be considered as an eligible investment and a non-U.S. corporate bond must have \$200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment. The intra-day, closing, and settlement prices of the portfolio securities and other instruments will be also readily available from the

national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services. The Fund may hold, in the aggregate, up to 15% of its net assets in: (1) illiquid securities, including non-negotiable certificates of deposit and master demand notes,²⁷ (2) Rule 144A securities, and (3) senior loans, second lien loans, and loan participation interests. Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The PIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in 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. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the PIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. 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 that will form the basis for the Fund's calculation of NAV at the end of the business day. 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 the CTA high-

²⁷ See note 14, supra.

speed line. 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. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 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 NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the PIV, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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-2012-139 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2012-139. 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 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-2012-139 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Kevin M. O'Neill
Deputy Secretary

²⁸ 17 CFR 200.30-3(a)(12).