

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68870; File No. SR-NYSEArca-2012-139)

February 8, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change to List and Trade First Trust Preferred Securities and Income ETF Under NYSE Arca Equities Rule 8.600

I. Introduction

On December 6, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the First Trust Preferred Securities and Income ETF (“Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published in the Federal Register on December 26, 2012.³ The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. 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.⁴ The investment adviser to the Fund is First Trust

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 68458 (December 18, 2012), 77 FR 76148 (“Notice”).

⁴ The Trust is registered under the Investment Company Act of 1940 (“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

Advisors L.P. (“Adviser”). 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. will serve as administrator, custodian, and transfer agent for the Fund. The Exchange states that each of the Adviser and Sub-Adviser is affiliated with a broker-dealer and represents that each such Adviser and Sub-Adviser has implemented a fire wall with respect to its respective broker-dealer affiliate regarding access to information concerning the composition of and changes to the Fund’s portfolio.⁵

Description of the Fund

The Fund’s objective will be to provide current income and total return. Under normal market conditions,⁶ the Fund will invest at least 80% of its net assets (including investment borrowings) in preferred securities (“Preferred Securities”) and income-producing debt securities

(File Nos. 333-176976 and 811-22245) (“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”).

⁵ See Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that, 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.

⁶ 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.

(“Income Securities”).⁷ 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.⁸ 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 Act⁹ that invest

⁷ The Exchange states that 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 that 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 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.

⁸ 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.

⁹ 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

primarily in Preferred Securities or Income Securities will be deemed to be Preferred Securities or Income Securities, respectively. The Adviser 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 comprise a minimum of 13 non-affiliated issuers.

As stated above, the Fund may invest in a variety of debt securities, including corporate debt securities.¹⁰ 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.¹¹ 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 issuing firms ("issuers") that have 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"); "Baa3" or higher by Moody's Investors Service, Inc.

1940 Act pursuant to exemptive orders obtained by certain ETFs and their sponsors from the Commission. The Exchange states that the Fund will not invest in leveraged, inverse, or leveraged inverse ETFs.

¹⁰ 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.

¹¹ 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.

(“Moody’s”); or a comparable rating 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 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 issuer 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 such securities have 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,” “Baa3” or lower by Moody’s, or a comparable rating 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.

Other Investments of the Fund

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 securities¹² or short-term debt securities to keep cash on hand fully invested or for temporary defensive purposes. The use of temporary investments is not a part of the principal investment strategy of the Fund. Short-term debt securities are securities from issuers having a long-term debt rating of at least A by S&P,

¹² 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.

Moody's, or Fitch, Inc. and having a maturity of one year or less. 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 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, Prime-2 or higher by Moody's, or F2 or higher by Fitch, Inc.

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 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.

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, (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.

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"). 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. In addition, the Fund intends to qualify annually and to elect to be treated as a regulated investment company under the Code.

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

The Exchange represents that that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange further represents that, for

initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Act,¹³ 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.

Additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, is included in the Notice and Registration Statement.¹⁴

III. Discussion and Commission’s Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act¹⁵ and the rules and regulations thereunder applicable to a national securities exchange.¹⁶ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁷ which requires, among other things, that the Exchange’s rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be

¹³ 17 CFR 240.10A-3.

¹⁴ See Notice and Registration Statement, supra notes 3 and 4, respectively.

¹⁵ 15 U.S.C. 78f.

¹⁶ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b)(5).

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,¹⁸ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, information regarding the intra-day value of the Shares ("indicative optimized portfolio value" or "IOPV"), which is 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.¹⁹ 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.²⁰ The Fund's NAV will be determined as of the close of trading (normally 4:00 p.m., Eastern Time) on each day the New York Stock Exchange ("NYSE") is open for business.²¹ A

¹⁸ 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹⁹ According to the Exchange, several major market data vendors display and/or make widely available IOPVs published on the CTA or other data feeds.

²⁰ On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information: 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.

²¹ The Exchange states that 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 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.

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 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, and 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 intra-day, closing, and settlement prices of the portfolio securities and other instruments also will be 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. The Fund's website will also include a form of the prospectus for the Fund, information relating to NAV (updated daily), and other quantitative and trading 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.²² In addition, the Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca

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., 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 IOPV.

²² See NYSE Arca Equities Rule 8.600(d)(1)(B).

Equities Rule 8.600(d)(2)(D) and 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.²³ 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.²⁴ The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Moreover, the Exchange states that the Adviser and Sub-Adviser are each affiliated with a broker-dealer, and represents that each such Adviser and Sub-Adviser 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 Fund's portfolio.²⁵ The Exchange further represents that it is able to obtain information via the

²³ See NYSE Arca Equities Rules 8.600(d)(2)(C) and 8.600(d)(2)(D). 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.

²⁴ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

²⁵ See supra note 5 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its 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

ISG from other exchanges that are ISG members, including all U.S. national securities exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁶

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 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 ("ETP") Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will

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.

²⁶ As noted above, 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 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 supra note 8. In addition, ETFs in which the Fund may invest will be listed on a national securities exchange. See supra note 9.

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 IOPV will not be calculated or publicly disseminated; (d) how information regarding the IOPV 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 Act,²⁷ as provided by NYSE Arca Equities Rule 5.3.
- (6) Initially, at least 50% of the Fund's net assets invested in Preferred Securities and Income Securities will be exchange-listed.²⁸ In addition, 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. Specifically with respect to corporate bonds, 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. Further, the Fund's portfolio will comprise a minimum of 13 non-affiliated issuers.

²⁷ See 17 CFR 240.10A-3.

²⁸ See supra note 26 and accompanying text.

- (7) The Fund will invest at least 80% of its net assets in Income Securities of issuing firms having a long-term issuer credit rating of investment grade at the time of investment.
- (8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities, including non-negotiable certificates of deposit and master demand notes; Rule 144A securities; and senior loans, second lien loans, and loan participation interests.
- (9) The Fund will not: (a) take short positions in securities; and (b) pursuant to the terms of the Exemptive Order, invest in options contracts, futures contracts, or swap agreements. In addition, the Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.
- (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 and description of the Fund, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act²⁹ and the rules and regulations thereunder applicable to a national securities exchange.

²⁹ 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁰ that the proposed rule change (SR-NYSEArca-2012-139) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Kevin M. O'Neill
Deputy Secretary

³⁰ 15 U.S.C. 78s(b)(2).

³¹ 17 CFR 200.30-3(a)(12).