

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-C2-2015-033 and should be submitted on or before February 17, 2016.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the 30th day after the date of publication of Amendment No. 2 in the **Federal Register**. As discussed above, Amendment No. 2 clarified that the Exchange will notify Trading Permit Holders by electronic message if the Exchange determines that the put strike price or call underlying value check should not apply in the interest of maintaining a fair and orderly market under proposed Exchange Rule 6.17(d)(ii).²³ C2 also represented in Amendment No. 2 that the Exchange will document, retain, and periodically review any Exchange decision to not apply the put check or call check under proposed Exchange Rule 6.17(d)(ii), including the reason for the decision.²⁴ Lastly, in Amendment No. 2, C2 clarified that the potential range of the percentage amount it will use to calculate the maximum value acceptable price range check in proposed Exchange Rule 6.17, Interpretation and Policy .04(h)(1)(iii), is between 1% and 5%.²⁵ The Commission believes that these changes provide greater clarity and remove any possible uncertainty regarding the potential exercise of Exchange discretion with regard to the proposed price protection mechanisms. In particular, the representation about documenting, retaining, and periodically reviewing decisions to suspend a price check will enable C2 to monitor the actions of its senior Help Desk personnel and assure that the suspension of any price check is appropriate and consistent with C2's responsibilities as a self-regulatory organization and the principles articulated in the Act that are applicable to exchanges. Further, clarifying the possible range of the maximum value acceptable price range provides valuable information to Trading Permit Holders to help them better understand and evaluate this price protection functionality. Accordingly, the

Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act²⁶ that the proposed rule change (SR-C2-2015-033), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Brent J. Fields,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76957; File No. SR-ISE-2016-03]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

January 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 13, 2016, the International Securities Exchange, LLC (the "Exchange" or "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. 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

ISE proposes to amend the Schedule of Fees as described in more detail below. The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.ise.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

²⁶ 15 U.S.C. 78f(b)(2).

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rebate is to amend the Schedule of Fees to introduce a new set of rebates to the Qualified Contingent Cross ("QCC") and/or other solicited crossing orders, including solicited orders executed in the Solicitation, Facilitation or Price Improvement Mechanisms, pricing initiative that offers rebates to members that execute a specified volume of QCC and other solicited crossing orders in a month. The proposed rebates apply to QCC and solicited orders between two Priority Customers³ ("Customer to Customer" Orders) executed by members that (1) execute a specified volume of QCC and solicited orders in a given month and (2) have a total unsolicited originating Facilitation contract side volume of 175,000 or more per month. The Exchange notes it is not proposing any change to how volume is calculated for the current volume tiers. Thus, members will continue to obtain the tier level based on all QCC and/or solicited crossing orders' originating side volume. Members will also continue to receive the Non-"Customer to Customer" Order⁴ rebate for their Non-"Customer to Customer" Orders and the "Customer to Customer" Order rebate for their "Customer to Customer" Orders.

Currently, the Exchange offers members rebates in QCC and/or other solicited crossing orders (including "Customer to Customer" Orders), *i.e.*

³ The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

⁴ "Non-'Customer to Customer' Orders" are QCC and/or other solicited crossing orders, including solicited orders executed in the Solicitation, Facilitation or Price Improvement Mechanisms, and excluding "Customer to Customer" Orders.

²³ See Amendment No. 2, *supra* note 4.

²⁴ *Id.*

²⁵ *Id.*

orders executed in the Solicitation, Facilitation, or Price Improvement Mechanisms where the agency order is executed against an order solicited from another party. These rebates are provided for each originating side of a crossing order, based on a member's volume in the crossing mechanisms during a given month. Currently, for the Non-"Customer to Customer" Rebate, for members that execute 0 to 99,999 originating contract sides ("Tier 1") the rebate is \$0.00 per contract, for members that execute 100,000 to 199,999 originating contract sides ("Tier 2") the rebate is \$0.05 per contract, for members that execute 200,000 to 499,999 originating contract sides ("Tier 3") the rebate is \$0.07 per contract, for members that execute 500,000 to 699,999 originating contract sides ("Tier 4") the rebate is \$0.08 per contract, for members that execute 700,000 to 999,999 originating contract sides ("Tier 5") the rebate is \$0.09 per contract, and for members that execute 1,000,000 originating contract sides or more ("Tier 6") the rebate is \$0.11 per contract.⁵ Also, for the "Customer to Customer" Rebate, for Tier 1 the rebate is \$0.00, for Tiers 2 through 3 the rebate is \$0.01, and for Tiers 4 through 6 the rebate is \$0.03.

The Exchange now proposes to offer a new set of rebates called "Customer to Customer" Rebate PLUS. The proposed rebates apply to "Customer to Customer" Orders executed by members with (1) a specified volume of QCC and other solicited crossing orders in a given month and (2) 175,000 or more unsolicited originating Facilitation contract sides per month. The Facilitation Mechanism is a process by which an Electronic Access Member ("EAM") can execute a transaction wherein the EAM seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the EAM solicited interest to execute against a block-size order it represents as agent.⁶ Only orders entered into the Facilitation Mechanism that are facilitated by the entering EAM (*i.e.* unsolicited Facilitation orders) will count towards the volume threshold described above.⁷ Once a member has met the volume thresholds described above, the member will receive a rebate for each originating contract side of their "Customer to

Customer" Orders. In particular, the member will receive a "Customer to Customer" Rebate PLUS of \$0.00 per contract for Tier 1, and \$0.05 per contract for Tiers 2 through 6. The Exchange notes that members may receive either the "Customer to Customer" Rebate or the "Customer to Customer" Rebate PLUS—not both.

Finally, all originating contract side volume will continue to contribute to the member's Tier level, however a member's "Customer to Customer" rebate will depend on its unsolicited originating Facilitation volume. For example, if a member has 175,000 originating contract sides for Non-"Customer to Customer" Orders and 75,000 originating contract sides for "Customer to Customer" Orders, the member's aggregated volume will be 250,000 placing them in Tier 3 (200,000 to 499,999). As a result, the member will receive a rebate of \$0.07 per originating contract side for its Non-"Customer to Customer" Orders and a rebate of either 1) \$0.01 per originating contract side for its "Customer to Customer" Orders (*i.e.* "Customer to Customer" Rebate) or 2) if the member has 175,000 or more unsolicited originating Facilitation contract sides, \$0.05 per originating side for its "Customer to Customer" Orders (*i.e.* "Customer to Customer" Rebate PLUS).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and Section 6(b)(4) of the Act,⁹ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that it is reasonable and equitable to provide for the opportunity to receive these rebates because they will incentivize members to send varying types of crossing volumes to the Exchange. In particular, the proposed rebates will encourage members to send unsolicited Facilitation orders to meet the 175,000 volume threshold to obtain the greater PLUS Rebate and encourage more "Customer to Customer" volume to achieve the higher rebates. Further, the Exchange believes it is reasonable and equitable to provide for the opportunity to receive the proposed rebates because they are attractive to market participants, and many exchanges, including CBOE for example, offer no rebate for customer to customer

executions.¹⁰ Finally, the Exchange believes that the proposed fees are not unfairly discriminatory because these rebates would be uniformly applied to all members' "Customer to Customer" Orders that meet the required volume thresholds.

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

In accordance with Section 6(b)(8) of the Act,¹¹ the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rebates are attractive to market participants and are better than the rebates (if any) offered by other exchanges.¹² The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹³ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹⁴ because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if

¹⁰ See CBOE Fee Schedule, QCC Rate Table, Notes at <https://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>.

¹¹ 15 U.S.C. 78f(b)(8).

¹² CBOE for example, offers no rebate (credit) for customer to customer executions. See CBOE Fee Schedule, QCC Rate Table, Notes at <https://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

⁵ The rebate is applied to the originating contract side of QCC and solicited crossing orders traded in a given month once a member reaches the specified volume threshold/Tier during that month.

⁶ See Rule 716(d).

⁷ In addition, the Exchange notes that it will only count originating contract sides in determining whether the EAM has met the 175,000 contract threshold.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 Email to rule-comments@sec.gov. Please include File No. SR-ISE-2016-03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-ISE-2016-03. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 such 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-ISE-

2016-03 and should be submitted by February 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76944; File No. SR-NASDAQ-2016-002]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To List and Trade Shares of the First Trust Municipal High Income ETF of First Trust Exchange-Traded Fund III

January 21, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 6, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. 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

Nasdaq proposes to list and trade the shares of the First Trust Municipal High Income ETF (the "Fund") of First Trust Exchange-Traded Fund III (the "Trust") under Nasdaq Rule 5735 ("Managed Fund Shares").³ The shares of the Fund

are collectively referred to herein as the "Shares."

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects 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 the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares⁴ on the Exchange. The Fund will be an actively-managed exchange-traded fund ("ETF"). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on January 9, 2008.⁵ The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N-1A ("Registration Statement") with the

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) (the "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 Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, 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 Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812-13795) (the "Exemptive Relief"). In addition, on December 6, 2012, the staff of the Commission's Division of Investment Management ("Division") issued a no-action letter ("No-Action Letter") relating to the use of derivatives by actively-managed ETFs. See No-Action Letter dated December 6, 2012 from Elizabeth G. Osterman, Associate Director, Office of Exemptive Applications, Division of Investment Management. The No-Action Letter stated that the Division would not recommend enforcement action to the Commission under applicable provisions of and rules under the 1940 Act if actively-managed ETFs operating in reliance on specified orders (which include the Exemptive Relief) invest in options contracts, futures contracts or swap agreements provided that they comply with certain representations stated in the No-Action Letter.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR-NASDAQ-2008-039). There are already multiple actively-managed funds listed on the Exchange; see, e.g., Securities Exchange Act Release Nos. 71913 (April 9, 2014), 79 FR 21333 (April 15, 2014) (SR-NASDAQ-2014-019) (order approving listing and trading of First Trust Managed Municipal ETF); 69464 (April 26, 2013), 78 FR 25774 (May 2, 2013) (SR-NASDAQ-2013-036) (order approving listing and trading of First Trust Senior Loan Fund); 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR-NASDAQ-2012-004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.