

be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 22, 2016, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

Applicants: Trust: c/o John K. Carter, Esq., Law Office of John K. Carter, 9455 Koger Blvd., Suite 102, St. Petersburg, Florida 33702 and Adviser: Patrick Reinkemeyer, President, SilverPepper LLC, 570 Oakwood Avenue, Lake Forest, Illinois 60045.

FOR FURTHER INFORMATION CONTACT: Emerson Davis, Senior Counsel, at (202) 551-6868, or Daniele Marchesani, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Summary of the Application

1. The Adviser will serve as the investment adviser to the Subadvised SP Series pursuant to an investment advisory agreement with the Trust (the "Investment Management Agreement").¹ The Adviser will provide the Subadvised SP Series with

¹ Applicants request relief with respect to any existing and any future series of the Trust and any other existing or future registered open-end management company or series thereof that: (a) is advised by the Adviser or its successor or by a person controlling, controlled by, or under common control with the Adviser or its successor (each, also an "Adviser"); (b) uses the manager of managers structure described in the application; and (c) complies with the terms and conditions of the application (any such series, a "Subadvised SP Series" and collectively, the "Subadvised SP Series"). For purposes of the requested order, "successor" is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

continuous and comprehensive investment management services subject to the supervision of, and policies established by, each Subadvised SP Series' board of trustees ("Board"). The Investment Management Agreement permits the Adviser, subject to the approval of the Board, to delegate to one or more sub-advisers (each, a "Sub-Adviser" and collectively, the "Sub-Advisers") the responsibility to provide the day-to-day portfolio investment management of each Subadvised SP Series, subject to the supervision and direction of the Adviser. The primary responsibility for managing the Subadvised SP Series will remain vested in the Adviser. The Adviser will hire, evaluate, allocate assets to and oversee the Sub-Advisers, including determining whether a Sub-Adviser should be terminated, at all times subject to the authority of the Board.

2. Applicants request an exemption to permit the Adviser, subject to Board approval, to hire certain Sub-Advisers pursuant to Sub-Advisory Agreements and materially amend existing Sub-Advisory Agreements without obtaining the shareholder approval required under Section 15(a) of the Act and Rule 18f-2 under the Act.² Applicants also seek an exemption from the Disclosure Requirements to permit a Subadvised SP Series to disclose (as both a dollar amount and a percentage of the Subadvised SP Series' net assets): (a) The aggregate fees paid to the Adviser; and (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, "Aggregate Fee Disclosure").

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the Application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Subadvised SP Series shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Subadvised SP Series' shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes

² The requested relief will not extend to any sub-adviser that is an affiliated person, as defined in Section 2(a)(3) of the Act, of a Subadvised SP Series or the Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised SP Series ("Affiliated Sub-Adviser").

fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the Application, the Investment Management Agreements will remain subject to shareholder approval, while the role of the Sub-Advisers is substantially similar to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Subadvised SP Series. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Adviser's ability to negotiate fees paid to the Sub-Advisers that are more advantageous for the Subadvised SP Series.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-18466 Filed 8-3-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78445; File No. SR-CHX-2016-11]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt the Securities Trader Registration Category and the Series 57 Securities Trader Examination Registration Requirement

July 29, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on July 20, 2016, the Chicago Stock Exchange, Inc. ("CHX" 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 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

CHX proposes to amend the Rules of the Exchange ("CHX Rules") to adopt the Securities Trader registration

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

category and the Series 57 Securities Trader Examination registration requirement.

CHX has designated this proposed rule change as non-controversial pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(6)⁴ thereunder and has provided the Commission with the notice required by Rule 19b-4(f)(6)(iii).⁵

The text of this proposed rule change is available on the Exchange's Web site at (www.chx.com) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes 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 CHX 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 amend various provisions under Article 6 to adopt the Securities Trader registration category and the Series 57 Securities Trader Examination registration requirement and to eliminate references to the Proprietary Trader registration category and the Series 56 Proprietary Trader Examination registration requirement. The Series 56 exam was discontinued by FINRA on January 4, 2016.⁶ Thus, the Exchange proposes the following amendments, as discussed in further detail below:

- Amend Rule 3(a) and Rule 3(d) to replace references to the Proprietary Trader registration category and the Series 56 exam with the Securities Trader registration category and the Series 57 exam, respectively.

- Amend Article 6, Rule 3(a) to require any Representative⁷ that engages in securities trading activities, on either an agency or principal basis, for the Participant with which the Representative is associated, to register with the Exchange as a Securities Trader and to pass the Series 57 exam. The Series 7 General Securities Representative Examination will not be an acceptable qualification examination to register as a Securities Trader.

- Amend Article 6, Rule 3(b)(1) to modify the current Proprietary Trader Exception, which permits Chief Compliance Officers of Participants that engage solely in proprietary trading to maintain the Series 14, in lieu of the Series 24, as an expanded Securities Trading Exception for Participants that engage solely in securities trading activities, on either an agency or principal basis.

- Amend Article 6, Rule 2(c)(2) to replace the Limited Principal—Proprietary Trader registration category with the Securities Trader Principal registration category and update related requirements.

- Amend Article 6, Rule 11 to delete references to the S501 Series 56 Proprietary Trader Program for Series 56 registered persons and the Series 56 exam and, instead, require Securities Traders to take the S101 General Program to fulfill Regulatory Element requirements.⁸

This filing is similar to SR-FINRA-2015-017,⁹ which has been approved by the Commission.

Proposed Representative Registration Requirements

Current CHX Rules provide that Representatives are required to be registered with the Exchange in the category of registration appropriate to

⁷ CHX Article 6, Rule 2(b) defines "Representatives" as follows:

Persons associated with a Participant who are engaged or will be engaged in the securities business of a Participant, or the management of such securities business, including the functions of supervision, solicitation, conduct of business or the training of persons associated with a Participant for any of these functions are Representatives.

A "Participant" is a "member" of the Exchange for purposes of the Act. See CHX Article 1, Rule 1(s).

⁸ Pursuant to CHX Article 6, Rule 11(a), each registered person shall complete the Regulatory Element of the continuing education program on the occurrence of their second registration anniversary date(s), and every three years thereafter or as otherwise prescribed by the Exchange. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the "base date," shall establish the cycle of anniversary dates for purposes of this rule.

⁹ See *supra* note 6.

the function to be performed.¹⁰ As CHX Rules have not yet been updated to reflect the new Securities Trader registration category and the Series 57 exam registration requirement, CHX Rules currently require the following:

- A Representative must register with the Exchange as a General Securities Representative (Series 7) or Proprietary Trader (Series 56)¹¹ before such registration is effective.¹²

- Each Representative is required to register as a General Securities Representative and pass the Series 7 General Securities Representative Examination; provided that in the event a Representative's activities are confined to making trading decisions regarding, or otherwise engaging in, proprietary trading for the broker-dealer with which he or she is associated, the Representative may register as a Proprietary Trader without registering as a General Securities Representative.¹³

- In order to qualify as a Proprietary Trader, a Representative must pass either the Series 7 exam or Series 56 exam.¹⁴

The Exchange now proposes to amend current Article 6, Rule 3(a). Specifically, the Exchange proposes to amend paragraph (a)(1) to provide that each Representative shall be required to register with the Exchange as a General Securities Representative and pass the Series 7 General Securities Representative Examination. However, a Representative that is engaged in securities trading activities, on either an agency or principal basis, for the Participant with which the Representative is associated, must register with the Exchange as a Securities Trader and pass the Series 57 Securities Trader Examination, subject to amended paragraph (a)(2).

Amended paragraph (a)(2)¹⁵ provides that a Representative that is engaged solely in securities trading activities, on either an agency or principal basis, for the Participant with which the Representative is associated, shall not be required to register with the

¹⁰ See current CHX Article 6, Rule 2(a).

¹¹ The Series 56 exam was discontinued on January 4, 2016. See *supra* note 6.

¹² See current CHX Article 6, Rule 3(a).

¹³ See *id.*

¹⁴ See *id.*; see also Securities Exchange Act Release No. 70597 (October 2, 2013), 78 FR 62728 (October 22, 2013) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Registration, Qualification, Supervision, and Continuing Education of Individuals Associated with Participant Firms) (SR-CHX-2013-14).

¹⁵ The Exchange proposes to delete current Article 6, Rule 3(a)(2) in its entirety as it defines the Proprietary Trader registration category, which will be eliminated pursuant to this proposed rule change.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ 17 CFR 240.19b-4(f)(6)(iii).

⁶ See Securities Exchange Act Release No. 75783 (August 28, 2015), 80 FR 53369 (September 3, 2015) (Order Approving a Proposed Rule Change To Establish the Securities Trader and Securities Trader Principal Registration Categories) (SR-FINRA-2015-017).

Exchange as a General Securities Representative. Moreover, a Representative registered with the Exchange solely as a Securities Trader will not be qualified to function in any other registration category.

Current Article 6, Rule 3(d) provides, among other things, that Institutional Broker Representatives¹⁶ at Participant Firms that do not hold customer accounts and that only execute orders from other brokers or dealers or engage in proprietary trading only may, in the alternative to passing the Series 7, pass the Series 56 Proprietary Trader Exam. The Exchange now proposes to replace all references under current Article 6, Rule 3(d) to the “Series 56” with the “Series 57.” The Exchange also proposes to replace the reference to the “Proprietary Trader Exam” with the “Securities Trader Exam” and the reference to the “Proprietary Trader Exception” under current Article 6, Rule 3(b)(1) with the proposed “Securities Trading Exception” under amended Article 6, Rule 3(b)(1), as described below. In addition, the Exchange proposes to capitalize the term “Customer,” as it is defined under CHX Rules.¹⁷ Moreover, the Exchange proposes to amend the third sentence under Rule 3(d) to provide that Institutional Broker Representatives at Participant Firms that do not carry Customers accounts and that only execute orders from other brokers or dealers or engage in proprietary trading must pass the Series 57 Securities Trader Exam.

The Exchange also proposes to delete current Article 6, Rule 3(e) as it provides obsolete compliance dates.¹⁸

Proposed Securities Trading Exception for Certain Chief Compliance Officers

Current Article 6, Rule 3(b)(1) permits the Chief Compliance Officer of a Participant Firm to maintain the Series 14 Compliance Official qualification, in lieu of the Series 24 General Securities Principal qualification, if the Participant Firm engages solely in proprietary trading and otherwise meets the requirements listed under current Article 6, Rule 3(b) and Article 6, Rule 2(c)(1).¹⁹ The Exchange now proposes to

conform the exception to apply to firms that engage solely in securities trading activities, on either an agency or principal basis. Thus, the Exchange proposes to amend Article 6, Rule 3(b) by replacing the term “Proprietary Trading” with the phrase “securities trading activities, on either an agency or principal basis” and rename the exception as the “Securities Trading Exception.”

Proposed Securities Trader Principal

Current Article 6, Rule 2(c)(2) provides for a limited principal registration category called the “Limited Principal—Proprietary Trader.” Specifically, current subparagraph (A) provides that each person associated with a Participant who is included within the definition of a Principal²⁰ may register with the Exchange as a Limited Principal—Proprietary Trader if: (i) His or her supervisory responsibilities in the securities business are limited solely to the activities of a Participant that involve proprietary trading; (ii) he or she is registered pursuant to Exchange Rules as a Proprietary Trader; and (iii) he or she is qualified to be so registered by passing the Series 24 examination. Current subparagraph (B) provides that a person registered in this category shall not be qualified to function in a Principal capacity with responsibility over any area of business activity not described in paragraph (c)(2)(A)(i) of this Rule.

The Exchange now proposes to amend Article 6, Rule 2(c)(2)(A) to provide that each Principal shall register with the Exchange as a Securities Trader Principal if such Principal supervises the securities trading activities of a Participant. Moreover, a Principal is required to pass the Series 57 exam as a prerequisite to registration as a Securities Trader Principal.²¹

The Exchange also proposes to amend Article 6, Rule 2(c)(2)(B) to provide that a person registered as a Securities Trader Principal shall only be qualified to supervise the securities trading activities of a Participant and shall not be qualified to supervise any other activities of a Participant. Moreover, a Principal shall not be qualified to

supervise the trading activities of a Participant, unless such person is registered as a Securities Trader Principal.

The Exchange also proposes to amend Article 6, Rule 2(c) to provide that all persons engaged or to be engaged in the securities business of a Participant who are to function as a Principal shall be registered with the Exchange as a General Securities Principal, unless the Principal meets the requirements under this Rule 2(c), so as to contemplate the proposed Securities Trader Principal registration requirement. Moreover, for the purpose of clarifying the examination requirements for all Principals, the Exchange proposes to amend the last sentence of current Rule 2(c) to provide that each Principal shall pass the Series 24 or Series 14 exam, as applicable, pursuant to Article 6, Rule 3(b).²²

Proposed Continuing Education Requirements

Current Article 6, Rule 11 provides continuing education requirements for registered persons, including Proprietary Traders. The Exchange now proposes to amend Article 6, Rule 11(a)(3) to eliminate reference to the S501 Series 56 Proprietary Trader continuing education program for Series 56 registered persons, as the S501 Series 56 Proprietary Trader continuing education program was phased out along with the Series 56 exam on January 4, 2016.²³ The Exchange now proposes to require Series 57 registered persons to take the S101 General Program to fulfill the Regulatory Element requirement. Thus, the Exchange proposes to replace current Article 6, Rule 11(a)(3) with new language that provides that the following sets forth the Regulatory Element appropriate for each registration category:

| Category of registration | Regulatory element |
|--|--|
| General Securities Representative. Securities Trader | S101 General Program. S101 General Program. |
| General Securities Principal. Securities Trader Principal. Financial and Operations Principal. | S201 Supervisor Program. S201 Supervisor Program. S201 Supervisor Program. |

The Exchange also proposes to replace a reference to “Series 56” with “Series 57” under the first sentence of

¹⁶ See CHX Article 1, Rule 1(gg) defining “Institutional Broker Representative.”

¹⁷ See CHX Article [sic], Rule 1(hh) defining “Customer.”

¹⁸ See *supra* note 14.

¹⁹ CHX Article 6, Rule 2(c)(1) provides as follows:

Definition of Principals. Persons associated with a Participant, enumerated in subparagraphs (A) through (E) hereafter, who are actively engaged in the management of the Participants’ securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions

are designated as Principals. Such persons shall include:

- (A) Sole Proprietors;
- (B) Officers;
- (C) Partners;
- (D) Branch office managers; and
- (E) Directors.

²⁰ See *id.*

²¹ All Principals are required to pass the Series 24 or Series 14 exam, as applicable, pursuant to current Article 6, Rule 3(b).

²² See *id.*

²³ See *supra* note 6.

Article 6, Rule 11(b)(1), which describes persons subject to the Firm Element continuing education requirement.

2. Statutory Basis

The Exchange believes that proposed rule change is consistent with Section 6(b) of the Act²⁴ in general and Section 6(b)(5) of the Act²⁵ in particular, which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Additionally, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that adoption of the Securities Trader registration category and Series 57 exam registration requirement is consistent with the Act. FINRA indicated that the Series 57 exam was being developed in an effort to adopt a more tailored examination. The Exchange believes that adopting the Series 57 exam for Representatives engaging in trading activities will help ensure professionalism among market participants, prevent fraudulent and manipulative practices, and promote just and equitable principles of trade. The Exchange also believes that it is in the interests of investors and the general public to adopt a tailored qualification examination for proprietary traders and that a uniform qualification standard may help ensure fair and orderly markets. Furthermore, the Exchange believes that it is in the interests of all market participants to provide consistent qualification and registration requirements across markets. The Exchange believes that harmonizing the Exchange's qualification and registration requirements with those of FINRA and the other national securities exchanges would further such interests.

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. The Exchange believes that the proposed rule change relating to Securities Traders, which is based upon and substantially similar to recent rule changes adopted by FINRA, which is similar to the filings of other national securities exchanges, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of these registration requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)²⁶ of the Act and Rule 19b-4(f)(6) thereunder.²⁷

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²⁸ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²⁹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. According to the Exchange, the Series 57 exam has already replaced the Series 56 exam, which was discontinued by FINRA as of January 4, 2016, and the waiver of the operative delay would permit new Representatives to register with the Exchange under registration

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁸ 17 CFR 240.19b-4(f)(6).

²⁹ 17 CFR 240.19b-4(f)(6)(iii).

standards similar to those of FINRA and other national securities exchanges.³⁰ Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.³¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if 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-CHX-2016-11 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 No. SR-CHX-2016-11. 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

³⁰ See *supra* note 6.

³¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

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 the filing also will be available for inspection and copying at the principal office of the CHX. 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 No. SR-CHX-2016-11 and should be submitted on or before August 25, 2016.

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

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-18472 Filed 8-3-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78443; File No. SR-NASDAQ-2016-064]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of the Shares of the First Trust Strategic Mortgage REIT ETF of First Trust Exchange-Traded Fund VIII

July 29, 2016.

I. Introduction

On May 3, 2016, The NASDAQ Stock Market LLC ("Exchange" or "Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares ("Shares") of the First Trust Strategic Mortgage REIT ETF ("Fund") of First Trust Exchange-Traded Fund VIII ("Trust") under NASDAQ Rule 5735. The proposed rule change was published for comment in the **Federal Register** on May 12, 2016.³ On June 15, 2016, pursuant to Section

19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Exchange's Description of the Proposal

The Exchange proposes to list and trade the Shares under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares 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 February 22, 2016.⁶ The Fund will be a series of the Trust.

First Trust Advisors L.P. will be the investment adviser ("Adviser") to the Fund. First Trust Portfolios L.P. ("Distributor") will be the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon Corporation will act as the administrator, accounting agent, custodian, and transfer agent to the Fund. The Exchange states that the Adviser is not a broker-dealer, but it is affiliated with the Distributor, a broker-dealer.⁷ The Exchange represents that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of, and changes to, the portfolio.⁸ According to the Exchange, the Fund currently does not intend to use a sub-advisor.⁹

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 78078 (Jun. 21, 2016), 81 FR 40377.

⁶ The Exchange represents that the Trust is registered under the Investment Company Act of 1940 ("1940 Act"). See Registration Statement on Form N-1A for the Trust dated March 14, 2016 (File Nos. 333-210186 and 811-23147) ("Registration Statement"). The Exchange further states that the Trust has obtained certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 28468 (October 27, 2008) (File No. 812-13477).

⁷ See Notice, *supra* note 3, 81 FR at 29591.

⁸ See *id.* The Exchange further represents that, in the event (a) the Adviser or any sub-adviser registers as a broker-dealer, or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser registers as a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement a fire wall with respect to its relevant personnel and such broker-dealer affiliate, as applicable, regarding access to information concerning the composition of, and 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.

⁹ See *id.*

The Exchange has made the following representations and statements in describing the Fund and its investment strategy, including the Fund's portfolio holdings and investment restrictions.¹⁰

A. Exchange's Description of the Fund's Principal Investments

The investment objective of the Fund will be to generate high current income. Under normal market conditions,¹¹ the Fund will seek to achieve its investment objective by investing at least 80% of its net assets (including investment borrowings) in the exchange-traded common shares of U.S. exchange-traded mortgage real estate investment trusts ("mortgage REITs"). In general terms, a mortgage REIT makes loans to developers and owners of property and invests primarily in mortgages and similar real estate interests, and includes companies or trusts that are primarily engaged in the purchasing or servicing of commercial or residential mortgage loans or mortgage-related securities, which may include mortgage-backed securities issued by private issuers and those issued or guaranteed by U.S. Government agencies, instrumentalities, or sponsored entities.

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

B. Exchange's Description of the Fund's Other Investments

The Fund may invest (in the aggregate) up to 20% of its net assets in

¹⁰ The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value ("NAV"), distributions, and taxes, among other things, can be found in the Notice and the Registration Statement, as applicable. See Notice and Registration Statement, *supra* notes 3 and 6, respectively.

¹¹ The term "under normal market conditions" as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities 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. On a temporary basis, including for defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. According to the Exchange, during such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances. See Notice, *supra* note 3, 81 FR at 29591 n.8.

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 77781 (May 6, 2016), 81 FR 29590 ("Notice").