amendment would revise a provision that describes certain circumstances in which a national securities exchange must cease to be a Member of OPRA. The proposed OPRA Plan amendment was published for comment in the **Federal Register** on January 22, 2013.[4] The Commission received no comment letters in response to the Notice.

This order approves the proposed OPRA Plan amendment.

II. Description of the Proposal

The purpose of the proposed OPRA Plan amendment is to revise certain language contained in Section 3.5 of the OPRA Plan. Section 3.5 currently provides, in part, as follows: ''The membership status [in OPRA] of a Member shall terminate effective as of . . . the last day of the calendar quarter in which the Member has ceased maintaining a market for the trading of securities option contracts.'' [5] Under the current language, a Member that ceases to maintain a market for the trading of securities option contracts late in a calendar quarter would have little or no time in which to resume maintaining such a market if it wanted to remain a Member of OPRA.

OPRA proposes to amend Section 3.5 so that a national securities exchange that ceases to maintain a market for the trading of options may remain a Member of OPRA for an additional calendar quarter after the quarter in which it stops maintaining a market in options.

III. Discussion

After careful review, the Commission finds that the proposed OPRA Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[6] Specifically, the Commission finds that the proposed OPRA Plan amendment is consistent with Section 11A of the Act [7] and Rule 608 thereunder [8] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and to remove impediments to, and perfect the mechanism of, a national market system. The proposed change to Section 3.5 of the OPRA Plan is designed to allow additional time within which an existing OPRA Member may maintain its membership in OPRA if the Member stops maintaining a market in securities. Specifically, the amendment would provide an exchange that temporarily ceases to maintain a market for the trading of options with additional flexibility with respect to the date by which it must resume maintaining a market for the trading of options or lose its membership status in OPRA. The Commission believes that OPRA's proposal is consistent with Section 11A of the Act [9] and Rule 608 thereunder.[10]

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,[11] and Rule 608 thereunder,[12] that the proposed OPRA Plan amendment (SR–OPRA–2012–07) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–10351 Filed 5–1–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69465; File No. SR–Phlx–2013–40]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Strategy Fee Caps

April 26, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on April 17, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Strategy Fee Caps.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on April 18, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the 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 Exchange 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 this filing is to amend the Strategy Fee Caps which are currently located in Section II, entitled ''Multiply Listed Options.'' [3] Today, the Exchange caps certain dividend, merger, short stock interest and reversal and conversion floor option transactions. The Exchange is proposing to reformat the manner in which the caps are presented by first defining each strategy and then creating a table to display the caps. The Exchange also proposes to also amend the reversal and conversion cap.

First, the Exchange proposes to relocate the definitions of the various

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The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The eleven participants to the OPRA Plan are BATS Exchange, Inc., BOX Options Exchange, LLC, Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, International Securities Exchange, LLC, Miami International Securities Exchange, LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, NASDAQ Stock Market LLC, NYSE MKT LLC, and NYSE Arca, Inc.

[4] *See* Securities Exchange Act Release No. 68655 (January 15, 2013), 78 FR 4505 (''Notice'').

[5] OPRA is organized as a limited liability company, and the OPRA Plan is the Limited Liability Company Agreement of OPRA. The OPRA Plan therefore uses the vocabulary typically used in Limited Liability Company Agreements, and therefore refers to the national security exchanges that are participants in OPRA as ''Members,'' and to their participation in OPRA as ''membership.''

[6] In approving this proposed OPRA Plan Amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78k–1.

[8] 17 CFR 242.608.

[9] 15 U.S.C. 78k–1.

[10] 17 CFR 242.608.

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 242.608.

[13] 17 CFR 200.30–3(a)(29).

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

[2] 17 CFR 240.19b–4.

[3] This includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

strategies, which are currently in Section II, and define them under a heading ''Strategies and Definitions.'' Today, the Exchange defines a dividend strategy as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. The Exchange defines a merger strategy as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. The Exchange defines a short stock interest strategy as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. The Exchange defines reversal and conversion strategies as transactions that employ calls and puts of the same strike price and the underlying stock. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration. The Exchange is not proposing to amend the definitions which are currently in the rule text of the Pricing Schedule. The Exchange is proposing to simply relocate these definitions.

Today, Specialist,[4] Market Maker,[5] Professional,[6] Firm [7] and Broker-Dealer [8] floor option transaction charges in Multiply Listed Options are capped at $1,250 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class, and option transaction charges in Multiply Listed Options are capped at $750 for reversal and conversion strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts. Floor option transaction charges in Multiply Listed Options for dividend, merger, short stock interest and reversal and conversion strategies combined are further capped at $35,000 per member organization, per month when such members are trading in their own proprietary accounts (''Monthly Strategy Cap''). Reversal and conversion strategy executions are not included in the Monthly Strategy Cap for a Firm. To qualify for a strategy fee cap, the buy and sell side of a transaction must originate from the Exchange floor.

The Exchange will continue to offer a fee cap of $1,250 for dividend, merger and short stock interest strategies that are executed on the same trading day in the same options class when such members are trading in their own proprietary account on the Exchange's trading floor. With respect to the reversal and conversion fee cap, the Exchange will amend the fee cap to: (i) Lower the $750 fee cap to $700; and (ii) continue to offer such a rebate on floor options transactions executed on the same trading day in the same options class, but will not require transactions to be in a member's own proprietary account, as is the case today.

Floor option transaction charges in Multiply Listed Options for dividend, merger, short stock interest and reversal and conversion strategies combined will continue to be capped at $35,000 per member organization, per month when such members are trading in their own proprietary accounts (''Monthly Strategy Cap''), except for Firm. As is the case today, reversal and conversion strategy executions will not be included in the Monthly Strategy Cap for a Firm. The Exchange proposes to note for purposes of clarity in the Pricing Schedule that, as is the case today, reversal and conversion strategy executions (as defined in this Section II) are included in the Monthly Firm Fee Cap.[9]

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4) of the Act,[11] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that creating a strategy definition section in the Pricing Schedule and relocating all of the definitions to this section is reasonable, equitable and not unfairly discriminatory because the definitions are not being amended, but rather simply grouped together for ease of reference. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to display the strategy fee caps in a table format for ease of reference. The Exchange is not amending the dividend, merger and short stock interest fee caps nor is the Exchange amending the Monthly Strategy Cap, but will display those strategy fee caps in a table format on the Pricing Schedule.

The Exchange believes that amending the reversal and conversion strategy to offer a lower fee cap and eliminate the requirement that the transaction must be executed in a member's own proprietary account is reasonable because the Exchange believes that a greater number of market participants will be incentivized to transact a greater number of reversal and conversion strategies on the Exchange's trading floor to benefit from the lower fee cap and ability to apply all reversal and conversion strategies executed on the same trading day in the same options class on the Exchange's trading floor. The Exchange believes that offering a lower fee cap for reversal and conversion strategies and not requiring that the transactions be executed in a member's own proprietary account, as compared to other dividend, merger and short stock interest strategy executions which have a higher cap ($1,250) and require members to execute transactions in their own proprietary accounts, is reasonable because the Exchange desires to specifically incentivize market participants to transact reversal and conversion strategies and believes this proposal offers market participants competitive fee caps. In addition, the Exchange believes that it is reasonable to continue to require that all fee cap strategies, which combine executions for purposes of the Monthly Strategy Cap, must be traded in the member's

[4] A ''Specialist'' is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[5] A ''Market Maker'' includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (*see* Rule 1014(b)(ii)(B)). Directed Participants are also market makers.

[6] The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

[7] The term ''Firm'' applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC.

[8] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[9] Firms are subject to a maximum fee of $75,000 (''Monthly Firm Fee Cap''). Firm Floor Option Transaction Charges and QCC Transaction Fees, as defined in this section above, in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, and short stock interest strategy executions (as defined in this Section II) are excluded from the Monthly Firm Fee Cap. Reversal and conversion strategy executions (as defined in this Section II) are included in the Monthly Firm Fee Cap. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

own proprietary account. The Exchange believes that it reasonable to continue to impose the same requirements as today on all members for purpose of qualifying for the Monthly Strategy Cap. In addition, other options exchanges offer similar fee caps, namely NYSE Arca, Inc. (''NYSE Arca''),[12] NYSE Amex, Inc. (''NYSE Amex'') [13] and the Chicago Board Options Exchange, Incorporated (''CBOE'') [14] for strategies.

The Exchange believes that amending the reversal and conversion strategy to offer a lower fee cap and eliminate the requirement that the transaction must be executed in a member's own proprietary account is equitable and not unfairly discriminatory because the Exchange is proposing to continue to offer the reversal and conversion fee cap to all market participants, except for Customers.[15] All market participants that are assessed transaction fees will have an opportunity to cap floor option transaction charges in Multiply Listed Options. The Exchange believes that offering a lower fee cap for reversal and conversion strategies and not requiring that the transactions be executed in the member's own proprietary account, as compared to other dividend, merger and short stock interest strategy executions which have a higher cap ($1,250) and require members execute transactions in their own proprietary accounts, is equitable and not unfairly discriminatory because the Exchange believes this incentive is necessary to create further trading opportunities for members on the Exchange's trading floor and is being offered uniformly to all floor members. The Exchange believes a similar incentive is not necessary for dividend, merger and short stock interest strategies. In addition, the Exchange believes that it is equitable and not unfairly discriminatory to continue to require that all fee cap strategies, which combine executions for purposes of the Monthly Strategy Cap, must be traded in a member's own proprietary account. The Exchange is not amending the calculation of the Monthly Strategy Cap which will continue to impose the same requirements on members for all strategies to qualify for the Monthly Strategy Caps.

The Exchange's proposal to continue to exclude Firm floor options transaction charges related to reversal and conversion strategies from the Monthly Strategy Cap is reasonable because these fees would be capped as part of the Monthly Firm Fee Cap, which applies only to Firms. The Exchange believes that the exclusion of Firm floor options transaction charges related to reversal and conversion strategies from the Monthly Strategy Cap is equitable and not unfairly discriminatory because Firms, unlike other market participants, have the ability to cap transaction fees up to $75,000 per month. The Exchange would include floor option transaction charges related to reversal and conversion strategies in the Monthly Strategy Cap for Professionals, and Broker Dealers, when such members are trading in their own proprietary accounts, because these market participants are not subject to the Monthly Firm Fee Cap or other similar cap. While Specialists and Market Makers are subject to a Monthly Market Maker Cap on both electronic and floor options transaction charges, reversal and conversion transactions are excluded from the Monthly Market Maker Cap.[16] For the reasons described above, the Exchange believes including reversal and conversion strategies in the Monthly Firm Fee Cap is reasonable, equitable and not unfairly discriminatory because the cap provides an incentive for Firms to transact floor transactions on the Exchange, which brings increased liquidity and order flow to the floor for the benefit of all market participants.[17]

The Exchange believes that its proposal to amend the applicability of the strategy fee caps to orders originating from the Exchange floor is reasonable because members pay floor brokers to execute trades on the Exchange floor. The Exchange believes that offering fee caps to members executing floor transactions would defray brokerage costs associated with executing strategy transactions and continue to incentivize members to utilize the floor for certain executions.[18] The Exchange believes that its proposal to amend the applicability of the fee caps to orders originating from the Exchange floor is equitable and not unfairly discriminatory because today, the fee caps are only applicable for floor transactions. The Exchange believes that a requirement that both the buy and sell sides of the order originate from the floor to qualify for the fee cap constitutes equal treatment of members.

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 not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes apply uniformly to all members that incur transaction charges.[19] Further, the proposed changes are substantially similar to those found on other options exchanges; therefore, the Exchange believes the proposal is consistent with robust competition and does not provide any unnecessary burden on competition. Further, floor members pay floor brokers to execute trades on the Exchange floor. The Exchange believes that offering fee caps to members executing floor transactions and not electronic executions does not create an unnecessary burden on competition because the fee caps defray brokerage costs associated with executing strategy transactions. Also, requiring that both the buy and sell sides of the order originate from the floor to qualify for the fee cap constitutes equal treatment of members.

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange, as described in the proposal, are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

[12] *See* NYSE Arca General Options and Trading Permit (OTP) Fees.

[13] *See* NYSE Amex Options Fee Schedule.

[14] *See* CBOE's Fees Schedule.

[15] The term ''Customer'' applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Rule 1000(b)(14)). Customers are not assessed options transaction charges in Section II of the Pricing Schedule.

[16] The reversal and conversion strategy executions are excluded from the Monthly Market Maker Cap. *See* Section II of the Pricing Schedule.

[17] Firms are eligible to cap floor options transactions charges and QCC Transaction Fees as part of the Monthly Firm Fee Cap. QCC Transaction Fees apply to QCC Orders as defined in Exchange Rule 1080(o) and Floor QCC Orders as defined in 1064(e). *See* Section II of the Pricing Schedule.

[18] The Exchange's proposal would only apply the fee cap to options transaction charges where buy and sell sides originate from the Exchange floor. *See* proposed rule text in Section II of the Pricing Schedule.

[19] Customers are not assessed options transaction charges in Section II of the Pricing Schedule.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[20] 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 Number SR–Phlx–2013–40 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-Phlx-2013–40. 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–Phlx–2013–40 and should be submitted on or before May 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

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[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69464; File No. SR–NASDAQ–2013–036]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Relating to the Listing and Trading of the Shares of the First Trust Senior Loan Fund of First Trust Exchange-Traded Fund IV

April 26, 2013.

I. Introduction

On February 21, 2013, 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'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the First Trust Senior Loan Fund of First Trust Exchange-Traded Fund IV (''Fund''). On March 7, 2013, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded the original filing. The Commission published for comment in the **Federal Register** notice of the proposed rule change, as modified by Amendment No. 2, on March 13, 2013.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 2.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares pursuant to Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares.[4] The Exchange deems the Shares to be equity securities, rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.[5]

The Shares will be offered by the First Trust Exchange Traded Fund IV (''Trust''), which is organized as a Massachusetts business trust and is registered with the Commission as an investment company.[6] First Trust Advisors L.P. is the investment adviser (''Adviser'') to the Fund. First Trust Portfolios L.P. is the principal underwriter and distributor of the Shares (''Distributor''). The Bank of New York Mellon Corporation will act as the administrator, accounting agent, custodian and transfer agent to the Fund (''Custodian''). The Adviser is affiliated with the Distributor, a broker-dealer. As required by Nasdaq Rule 5735(g),[7] the Adviser has implemented a firewall with respect to its broker-dealer affiliate

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69072 (March 7, 2013), 78 FR 16006 (''Notice'').

[4] Under Nasdaq's Rules, a Managed Fund Share is a security that (a) represents an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value. *See* Nasdaq Rule 5735(c)(1).

[5] *See* Notice, *supra* note 3, 78 FR at 16017.

[6] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). *See* Post-Effective Amendment No. 15 to Registration Statement on Form N–1A for the Trust, dated December 14, 2012 (File Nos. 333–174332 and 811–22559) (''Registration Statement''). In addition, the Exchange represents that the Trust has obtained certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795) (''Exemptive Order'').

[7] Nasdaq Rule 5735(g) also requires that Adviser personnel who make decisions regarding the Fund's portfolio be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.