consider the matters raised in each
docket.
1. Pursuant to 39 U.S.C. 505, James F.
Callow is appointed to serve as an
officer of the Commission to represent
the interests of the general public in
these proceedings (Public
Representative).
2. Comments are due no later than
January 7, 2015.
3. The Secretary shall arrange for
publication of this order in the Federal
Register.

By the Commission.

Shoshana M. Grove,
Secretary.

[FN Doc. 2014–30968 Filed 1–5–15; 8:45 am]
BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73960; File No. SR–
NASDAQ–2014–127]

Self-Regulatory Organizations; The
NASDAQ Stock Market LLC; Notice of
Filing of Proposed Rule Change
Relating to the Listing and Trading of
the Shares of the Tuttle Tactical
Management U.S. Core ETF of ETFis Series Trust I

December 30, 2014.

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 December
19, 2014, 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 Tuttle Tactical
Management U.S. Core ETF of ETFis Series Trust I
(“Fund”), a series of ETFis Series Trust I (the “Trust”), under NASDAQ Rule 5735
(“Managed Fund Shares”).3 The shares
of the Fund are collectively referred to
herein as the “Shares.”

The text of the proposed rule change is
available at http://nasdaq.cchwallstreet.com/, at Nasdaq’s principal office, 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,
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 Delaware statutory trust on September 20, 2012.5 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
Commission.6 The Fund is a series of the
Trust.

Efis Capital LLC will be the
investment adviser (“Adviser”) to the
Fund. Tuttle Tactical Management, LLC will be the investment sub-adviser
(“Sub-Adviser”) to the Fund. ETF
Distributors LLC (the “Distributor”) will be the principal underwriter and
distributor of the Fund’s Shares. The
Bank of New York Mellon (“BNY
Mellon”) will act as the administrator,
accounting agent, custodian, and
transfer agent to the Fund.

Paragraph (g) of Rule 5735 provides
that if the investment adviser to the
investment company issuing Managed Fund Shares is affiliated with a broker-
dealer, such investment adviser shall
erect a “fire wall” between the
investment adviser and the broker-
dealer with respect to access to
to information concerning the composition
and/or changes to such investment
company portfolio.7 In addition,
paragraph (g) further requires that
personnel who make decisions on the
open-end fund’s portfolio composition
must be subject to procedures designed
to prevent the use and dissemination of material, non-public information
regarding the open-end fund’s portfolio.

Rule 5735(g) is similar to NASDAQ Rule
5705(b)[5][A][i]; however, paragraph (g)
in connection with the establishment of
a “fire wall” between the investment
adviser and the broker-dealer reflects


1. See Registration Statement on Form N–1A for
the Trust filed on July 24, 2014 (File Nos. 333-
187668 and 811–22819). The description of the
Fund and the Shares contained herein are based,
in part, on information in the Registration Statement.

2. An investment adviser to an open-end fund is
required to be registered under the Investment
Advisers Act of 1940 (the “Advisers Act”). As
a result, the Adviser, the Sub-Adviser and their
related personnel are subject to the provisions of
Rule 204A–1 under the Advisers Act relating to
codes of ethics. This Rule requires investment
advisers to adopt a code of ethics that reflects the
fiduciary nature of the relationship to clients as
well as compliance with other applicable securities
laws. Accordingly, procedures designed to prevent
the communication and misuse of non-public
information by an investment adviser must be
consistent with Rule 204A–1.

3. The Commission has issued an order granting
an exemption to the Trust under the 1940 Act
(15 U.S.C. 80a–6(a)–1) (the “Exemptive Order”).
The description of the Fund and the Shares contained
therein are based, in part, on information in the
Registration Statement.

4. A Managed Fund Share is a security that
represents an interest in an investment company
organized 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
granting certain exemptive relief to the Trust under the
1940 Act (the “Exemptive Order”). See Investment
Company Act Release No. 55607 (July 23, 2011). In
compliance with NASDAQ Rule 5735(b)(5), which
applies to Managed Fund Shares based on an
international or global portfolio, the Trust’s
application for exemptive relief under the 1940 Act
states that the Fund will comply with the federal
securities laws in accepting securities for deposits
and satisfying redemptions with redemption
securities, including that the securities accepted for
deposits and the securities used to satisfy
redemption requests are sold in transactions that
would be exempt from registration under the

6. Under subparagraph (i) above and
implemented written policies and procedures
reasonably designed to prevent violation, by the
investment adviser and its supervised persons, of
the Advisers Act and the Commission rules
adopted thereunder; (ii) implemented, at a minimum, an
annual review regarding the adequacy of the
policies and procedures established pursuant to
subparagraph (i) above; and (iii) designated an
individual (who is a supervised person) responsible for
administering the policies and procedures adopted
under subparagraph (i) above.
the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser and Sub-Adviser are not registered as broker-dealers; however the Adviser (but not the Sub-Adviser) is affiliated with a broker-dealer and has implemented 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 the portfolio. In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, 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.

Tuttle Tactical Management U.S. Core ETF

Principal Investments

The Fund’s investment objective will be to provide long-term capital appreciation while maintaining a secondary emphasis on capital preservation, primarily through investments in the U.S. equity market. The Fund will be an actively managed ETF that seeks to achieve its investment objective by utilizing a long-only, multi-strategy, tactically-managed exposure to the U.S. equity market. To obtain such exposure, the Sub-Adviser will invest, under normal circumstances, not less than 80% of its assets in exchange-traded notes (“ETNs”), exchange-traded trusts that hold commodities (“ETTs”) (collectively, ETFs, ETNs and ETTs are referred to hereinafter as “exchange-traded products” or “ETPs”), individually selected U.S. exchange-traded common stocks (when the Sub-Adviser determines that is more efficient or otherwise advantageous to do so), money market funds, U.S. treasuries or money market instruments.10 To the extent that the Fund invests in ETPs or money market funds to gain domestic exposure, the Fund is considered, in part, a “fund of funds.”

The Sub-Adviser will employ four tactical models in seeking to achieve the Fund’s investment objective: “S&P 500 Absolute Momentum,” “Relative Strength Equity,” “Beta Opportunities,” and “Short-Term S&P 500 Counter Trend.” While the Sub-Adviser will generally seek to maintain an equal weighting among these four tactical models, market movements may result in the Fund being overweight or underweight one or more of the tactical models.

Other Investments

In order to seek its investment objective, the Fund does not employ other strategies outside of the above-described “Principal Investments.” However, the Fund may, from time to time, take temporary defensive positions that are inconsistent with the Fund’s principal investment strategies in an attempt to respond to adverse market, economic, political, or other conditions. In such circumstances, the Fund may also hold up to 100% of its portfolio in cash or other short-term, highly liquid investments, such as money market instruments, U.S. government obligations, commercial paper, repurchase agreements or other cash equivalents. When the Fund takes a temporary defensive position, the Fund may not be able to achieve its investment objective.

Investment Restrictions

Under normal market conditions, the Fund will invest not less than 80% of its total assets in shares of ETPs, individually selected U.S. exchange-traded common stocks (when the Sub-Adviser determines that is more efficient or otherwise advantageous to do so), money market funds, U.S. treasuries or money market instruments. The Fund will not purchase securities of open-end or closed-end investment companies except in compliance with the 1940 Act. The Fund will not use derivative instruments, including options, swaps, forwards and futures contracts, both listed and over-the-counter (“OTC”). Under normal circumstances, the Fund will not invest more than 25% of its total assets in leveraged ETPs.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities and other illiquid assets (calculated at the time of investment). 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 or other illiquid assets. Illiquid securities and other illiquid assets 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.11

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company under SubChapter M of the Internal Revenue Code.12

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10 The ETNs are limited to those described in Nasdaq Rule 5710. Such securities will include securities that are issued or guaranteed by the U.S. Treasury, 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.


Under the 1940 Act, the Fund’s investment in investment companies will be limited to, subject to certain exceptions: (i) 3% of the total outstanding voting stock of any one investment company, (ii) 5% of the Fund’s total assets with respect to any one investment company, and (iii) 10% of the Fund’s total assets with respect to investment companies in the aggregate.

The Fund’s investments will be consistent with its investment objective. In pursuing its investment objective, the Fund may utilize instruments that have a leveraging effect on the Fund. This effective leverage occurs when the Fund’s market exposure exceeds the amounts actually invested. Any instance of effective leverage will be covered in accordance with guidance promulgated by the Commission and its staff. The Fund does not presently intend to engage in any form of borrowing for investment purposes, and will not be operated as a “leveraged ETF”, i.e., it will not be operated in a manner designed to seek a multiple of the performance of an underlying reference index.

Net Asset Value

The Fund’s net asset value (“NAV”) will be determined as of the close of trading (normally 4:00 p.m., Eastern time (“E.T.”)) on each day the New York Stock Exchange (“NYSE”) is open for business. NAV will be calculated for the Fund by taking the market price of the Fund’s total assets, including interest or dividends accrued but not yet collected, less all liabilities, and dividing such amount by the total number of Shares outstanding. The result, rounded to the nearest cent, will be the NAV per Share. All valuations will be subject to review by the Board or its delegate.

The Fund’s investments will be valued at market value (i.e., the price at which a security is trading and could presumably be purchased or sold) or, in the absence of market value with respect to any investment, at fair value in accordance with valuation procedures adopted by the Board and in accordance with the 1940 Act. Common stocks and equity securities (including shares of ETPs) will be valued at the last sales price on that exchange. Portfolio securities traded on more than one securities exchange will be valued at the last sale price or, if so disseminated by an exchange, the official closing price, as applicable, at the close of the exchange representing the principal exchange or market for such securities on the business day as of which such value is being determined. U.S. Treasuries are valued using quoted market prices, and money market funds are valued at the net asset value reported by the funds. For all security types in which the Fund may invest, the Fund’s primary pricing source is I/B/E/S; its secondary source is Reuters; and its tertiary source is Bloomberg.

Certain securities may not be able to be priced by pre-established pricing methods. Such securities may be valued by the Board or its delegate at fair value. The use of fair value pricing by the Fund will be governed by valuation procedures adopted by the Board and in accordance with the provisions of the 1940 Act. These securities generally include, but are not limited to, restricted securities (securities which may not be publicly sold without registration under the Securities Act of 1933) for which a pricing service is unable to provide a market price; securities whose trading has been formally suspended; a security whose market price is not available from a pre-established pricing source; a security whose price, as provided by the pricing service, does not reflect the security’s “fair value.” As a general principle, the current “fair value” of a security would appear to be the amount which the owner might reasonably expect to receive for the security upon its current sale. The use of fair value prices by the Fund generally results in the prices used by the Fund that may differ from current market quotations or official closing prices on the applicable exchange. A variety of factors may be considered in determining the fair value of such securities.

Creation and Redemption of Shares

The Trust will issue and sell Shares of the Fund only in Creation Unit aggregations, and only in aggregations of 50,000 Shares, on a continuous basis through the Distributor, without a sales load, at the NAV next determined after receipt, on any business day, of an order in proper form.

The consideration for purchase of Creation Unit aggregations of the Fund will consist of (i) a designated portfolio of securities determined by the Adviser that generally will conform to the holdings of the Fund consistent with its investment objective (the “Deposit Securities”) for each Creation Unit aggregation and generally an amount of cash (the “Cash Component”) as described below, or (ii) cash in lieu of all or a portion of the Deposit Securities, as described below. Together, the Deposit Securities and the Cash Component (including the cash in lieu amount) will constitute the “Fund Deposit,” which will represent the minimum initial and subsequent investment amount for a Creation Unit aggregation of the Fund.

The consideration for redemption of Creation Unit aggregations of the Fund will consist of (i) a designated portfolio of securities determined by the Adviser that generally will conform to the holdings of the Fund consistent with its investment objective per each Creation Unit aggregation (“Fund Securities”) and generally a Cash Component, as described below, or (ii) cash in lieu of all or a portion of the Fund Securities as defined below.

The Cash Component is sometimes also referred to as the Balancing Amount. The Cash Component will serve the function of compensating for any differences between the NAV per Creation Unit aggregation and the Deposit Amount (as defined below). For example, for a creation the Cash Component will be an amount equal to the difference between the NAV of Fund Shares (per Creation Unit aggregation) and the “Deposit Amount”—an amount equal to the market value of the Deposit Securities and/or cash in lieu of all or a portion of the Deposit Securities. If the Cash Component is a positive number (i.e., the NAV per Creation Unit aggregation exceeds the Deposit Amount), the Authorized Participant (defined below) will deliver the Cash Component. If the Cash Component is a negative number (i.e., the NAV per Creation Unit aggregation is less than the Deposit Amount), the Authorized Participant will receive the Cash Component.

BNY Mellon, through the National Securities Clearing Corporation (“NSCC”), will make available on each business day, prior to the opening of business of the Exchange (currently 9:30 a.m., E.T.), the list of the names and the quantity of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day). Such Fund Deposit will be applicable, subject to any adjustments as described below, in order to effect creations of Creation Unit aggregations of the Fund until such time as the next-announced composition of the Deposit Securities is made available. BNY Mellon, through the NSCC, will also make available on each business day, prior to the opening of business of the Exchange (currently 9:30 a.m., E.T.), the list of the names and the quantity of
each security to be included (based on information at the end of the previous business day), subject to any adjustments as described below, in order to affect redemptions of Creation Unit aggregations of the Fund until such time as the next-announced composition of the Fund Securities is made available.

The Trust will reserve the right to permit or require the substitution of an amount of cash, i.e., a “cash in lieu” amount, to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery or which might not be eligible for trading by an Authorized Participant or the investor for which it is acting or other relevant reason. To the extent the Trust effects the redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

In addition to the list of names and numbers of securities constituting the current Deposit Securities of a Fund Deposit, through the NSCC, will also make available on each business day, the estimated Cash Component, effective through and including the previous business day, per Creation Unit aggregation of the Fund. To be eligible to place orders with respect to creations and redemptions of Creation Units, an entity must be (i) a “Participating Party,” i.e., a broker-dealer or other participant in the clearing process through the continuous net settlement system of the NSCC or (ii) a Depository Trust Company (“DTC”) Participant (a “DTC Participant”). In addition, each Participating Party or DTC Participant (each, an “Authorized Participant”) must execute an agreement that has been agreed to by the Distributor and BNY Mellon with respect to purchases and redemptions of Creation Units.

All orders to create Creation Unit aggregations must be received by the Distributor no later than 3:00 p.m., E.T., an hour earlier than the closing time of the regular trading session on the Exchange (ordinarily 4:00 p.m., E.T.), in each case on the date such order is placed in order for creations of Creation Unit aggregations to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

In order to redeem Creation Units of the Fund, an Authorized Participant must submit an order to redeem for one or more Creation Units. All such orders must be received by the Distributor in proper form no later than 3:00 p.m., E.T., an hour earlier than the close of regular trading on the Exchange (ordinarily 4:00 p.m., E.T.), in order to receive that day’s closing NAV per Share.

Availability of Information

The Fund’s Web site (www.tuttlefunds.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include the Fund’s ticker, Cusip [sic] and exchange information along with additional quantitative information updated on a daily basis, including, for the Fund: (1) Daily trading volume, the prior business day’s reported NAV and closing price, mid-point of the bid/ask spread at the time of calculation of such NAV (the “Bid/Ask Price”) 14 and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar months. On each business day, before commencement of trading in Shares in the Regular Market Session 15 on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the “Disclosed Portfolio” as defined in Nasdaq Rule 5735(c)(2)) held by the Fund that will form the basis for the Fund’s calculation of NAV at the end of the business day. 16

On a daily basis, the Fund will disclose for each portfolio security and other asset of the Fund the following information on the Fund’s Web site if (applicable): Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holdings in the Fund’s portfolio. The Web site information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the “Intraday Indicative Value,” that reflects an estimated intraday value of the Fund’s portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service 17 will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Price information regarding the ETPs, equity securities, U.S. treasuries, money market instruments and money market Funds [sic] held by the Fund will be available through the U.S. exchanges trading such assets, in the case of exchange-traded securities, as well as automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. For all security types in which the Fund may invest, the Fund's primary pricing source is IDS; its secondary source is Reuters; and its tertiary source is Bloomberg.

Intra-day price information will also be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by Authorized Participants and other investors.

Investors will also be able to obtain the Fund’s Statement of Additional Information (“SAI”), the Fund’s Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Fund’s SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen.

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

15 See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).

16 Under accounting procedures to be followed by the Fund, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

17 Currently, the NASDAQ OMX Global Index Data Service ("GIDS") is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETPs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.
or downloaded from the Commission’s Web site at www.sec.gov. Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. The previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares and any underlying exchange-traded products.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions and taxes will be included in the Registration Statement.

Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Act. 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 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.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and other assets constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq’s existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund with other markets and other entities that are members of the ISG and FINRA may obtain trading information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Fund’s net assets that are invested in exchange-traded equities, including ETFs and common stock, will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

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

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose

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19 FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

20 For a list of the current members of ISG, see www.isoportal.org. The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

21 Id.
the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund’s Web site.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act in particular in that it is 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 in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange represents that trading in the Shares will be subject to the existing trading surveillance, administered by both Nasdaq and FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund’s portfolio. The Fund’s investments will be consistent with the Fund’s investment objective. FINRA may obtain information via ISG from other exchanges that are members of ISG. In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund from markets and other entities that are members of the ISG and FINRA may obtain trading information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes all U.S. and some foreign securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 will facilitate the listing and trading of an additional type of actively-managed exchange-traded fund that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund with other markets and other entities that are members of the ISG and FINRA may obtain trading information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes all U.S. and some foreign securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which
the self-regulatory organization consents, the Commission will:
(A) By order approve or disapprove the proposed rule change, or
(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments
• Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml); or
• Send an email to tule-comments@sec.gov. Please include File Number SR–NASDAQ–2014–127 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–NASDAQ–2014–127. 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 or communications relating 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2014–127 and should be submitted on or before January 27, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.22
Brent J. Fields,
Secretary.
[FR Doc. 2014–30896 Filed 1–5–15; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.: Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Adoption of FINRA Rule 3110(e) (Responsibility of Member To Investigate Applicants for Registration) in the Consolidated FINRA Rulebook

December 30, 2014.

I. Introduction

On September 18, 2014, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 (“Act”)1 and Rule 19b–4 thereunder,2 a proposed rule change to adopt NASD Rule 3110(e) in the consolidated FINRA rulebook (“Consolidated FINRA Rulebook”). The proposed rule change was published for comment in the Federal Register on October 3, 2014.3 The Commission received 10 comment letters in response to the Notice.4 On December 8, 2014, FINRA filed Amendment No.1 responding to these comments and proposing amendments in response to the comments.5 The Commission is publishing this notice to solicit comments from interested persons on the filing as amended by Amendment No.1 and is approving the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposal, as Modified by Amendment No. 1

As part of the process of developing the Consolidated FINRA Rulebook, FINRA is proposing to adopt NASD Rule 3010(e) (Qualifications Investigated) relating to background investigations as FINRA Rule 3110(e). According to FINRA, the proposed rule change streamlines and clarifies the rule language. For instance, NASD Rule 3010(e) currently provides that “[e]ach member shall have the responsibility and duty to ascertain by investigation the good character, business reputation, qualifications, and experience of any person prior to making such a certification in the application of such person for registration with this Association,” whereas proposed FINRA Rule 3110(e) provides that “[e]ach member shall ascertain by investigation the good character, business reputation, qualifications and experience of an applicant before the member applies to register that applicant with FINRA and before making a representation to that effect on the application for registration.” Further, proposed FINRA Rule 3110(e) clarifies that a firm is required to review a copy of an applicant’s most recent Form U5 (Uniform Termination Notice for Securities Industry Registration) if the applicant previously has been registered with FINRA or another self-regulatory organization.6