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

The Exchange neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;
B. impose any significant burden on competition; and
C. 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) of the Act, 16 and Rule 19b–4(f)(6) 17 thereunder. 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 will institute proceedings to determine whether the proposed rule change 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–CBOE–2015–051 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–CBOE–2015–051 on the subject line.

V. Solicitation of Comments

The Exchange neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;
B. impose any significant burden on competition; and
C. 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) of the Act, 16 and Rule 19b–4(f)(6). 17 thereunder. 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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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–CBOE–2015–051 on the subject line.

V. Conclusion

The Commission finds the proposed rule change to be consistent with the Act and the rules and regulations thereunder, 3 a proposed rule change to list and trade shares (“Shares”) of the Tuttle Tactical Management Multi-Strategy Income ETF (“Fund”), a series of ETFs Series Trust I (“Trust”) under NASDAQ Rule 5735. The proposed rule change was published for comment in the Federal Register on April 10, 2015. 4 On May 20, 2015, the Exchange filed Amendment No. 1 to the proposed rule change. 5 The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. 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. 6 The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (“Registration Statement”) 7 with the Commission. 8 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 will be the principal underwriter and distributor of the Fund’s Shares. The Bank of New York Mellon will act as the administrator, accounting agent, custodian, and transfer agent to the Fund. The Exchange states that the Adviser and Sub-Adviser are not registered as broker-dealers but that the Adviser is affiliated with a broker-dealer. 9 In addition, the Exchange states that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be

6 See Registration Statement on Form N–1A for the Trust filed on January 30, 2015 (File Nos. 333–187668 and 811–22819).
7 See Notice, supra note 4, 80 FR at 19372.
8 See Notice, supra note 4, 80 FR at 19372.
subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund’s 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 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.

The Exchange has made the following representations and statements regarding the Fund.

Investments for the Fund

The Fund’s investment objective will be to seek current income while maintaining a secondary emphasis on long-term capital appreciation and low volatility. The Fund will seek 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 market conditions, the Fund’s assets in ETFs, 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").

The Fund will not invest in leveraged, inverse, or leveraged inverse ETPs.

The Fund’s net assets that are invested in exchange-traded equities, including ETPs and common stock, will be invested in instruments that trade in markets that are members of the Intermarket Surveillance Group ("ISG") or are parties to a comprehensive surveillance sharing agreement with the Exchange.

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 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.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange’s proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act, which sets forth Congress’ finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares and any underlying exchange-traded products 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.

Price information regarding the ETPs, equity securities, U.S. treasuries, money market instruments and money market Funds 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. Intra-day price information for all assets held by the Fund will also be available through subscription services, such as Bloomberg, Markit and Thomson Reuters, which can be accessed by authorized participants and other investors. 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.

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. On each business day, before commencement of trading in Shares in the Regular Market Session on the
Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (“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. The Web site information will be publicly available at no charge. The NAV will be determined as of the close of trading (normally 4:00 p.m., E.T.) on each day the New York Stock Exchange is open for business. 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. The Intraday Indicative Value, available on the NASDAQ OMX indexes and ETFs.

The Exchange represents that it 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 also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. 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.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange states that the Adviser and Sub-Adviser are not registered as broker-dealers, but that the Adviser is affiliated with a broker-dealer. In addition, the Exchange states that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate 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 Fund’s 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.

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 market units that are members of 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 inadvisable. 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.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange states that the Adviser and Sub-Adviser are not registered as broker-dealers, but that the Adviser is affiliated with a broker-dealer. In addition, the Exchange states that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate 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 Fund’s 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.

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 market units that are members of 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 the 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 Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 to be listed and traded on the Exchange. 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. In support of this proposal, the Exchange represented that:

(1) The Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) Trading in the Shares will be subject to the existing trading surveillances 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, and 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.

(3) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(4) 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: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value and Disclosed Portfolio is disseminated; (d) 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; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.
(6) The Fund will not use derivative instruments, including options, swaps, forwards and futures contracts, both listed and OTC.

(7) 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.

(8) 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).

(9) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange’s representations, including those set forth above and in the Notice. For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act 31 and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,32 that the proposed rule change [SR–NASDAQ–2015–023], as modified by Amendment No. 1, is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.33

Robert W. Errett,
Deputy Secretary.

III. Proposed Rule Change

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 modify the Market Maker appointment and withdrawal process used by the Exchange. The proposed rule change was published for comment in the Federal Register on April 8, 2015.3 The Commission received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act 4 provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is May 23, 2015. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. The proposed rule change, if approved, would modify the Market Maker appointment and withdrawal process used by the Exchange.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,5 designates July 7, 2015, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2015–17).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.6

Robert W. Errett,
Deputy Secretary.

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Penny Pilot Options Fees and Rebates

May 21, 2015.

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 May 11, 2015, NASDAQ OMX BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 Chapter XV, entitled “Options Pricing” and Section 2, entitled “Options Market—Fees and Rebates”. Specifically, the Exchange proposes to: (1) Decrease the Fee to Add Liquidity in Penny Pilot Options; 3 (2) decrease the Rebate to Remove Liquidity in Penny Pilot Options; and (3) delete the Monthly Volume Tiers that apply to Lead Market Makers.

The text of the proposed rule change is available on the Exchange’s Web site at http://nasdaqomxbx.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