

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

**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)<sup>8</sup> of the Act and paragraph (f) of Rule 19b-4<sup>9</sup> 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.

**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](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2015-006 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-DTC-2015-006. 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 the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's Web site. (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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-DTC-2015-006 and should be submitted on or before June 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Robert W. Errett,

Deputy Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-75029; File No. SR-CBOE-2015-051]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay Implementation of Rule 15.2A**

May 21, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 20, 2015, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 delay the implementation of Rule 15.2A. There is no proposed change to the rule text.

**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

On August 13, 2014, the Commission approved CBOE Rules 6.53(y) and 15.2A.<sup>5</sup> Rule 6.53(y) defines a tied to stock order<sup>6</sup> and requires the representing Trading Permit Holder to include an indicator on each tied to stock order upon systemization, subject to certain exceptions. Rule 15.2A requires, in a manner and form prescribed by the Exchange, each Trading Permit Holder ("TPH"), on the business day following the order execution date, to report to the Exchange certain information regarding the executed stock or convertible security legs of qualified contingent cross ("QCC") orders,<sup>7</sup> stock-option

<sup>5</sup> Securities Exchange Act Release No. 72839 (August 13, 2014), 79 FR 49123 (August 19, 2014) (SR-CBOE-2014-040) (order approving Rules 6.53(y) and 15.2A).

<sup>6</sup> Rule 6.53(y) provides that an order is "tied to stock" if, at the time the Trading Permit Holder representing the order on the Exchange receives the order (if the order is a customer order) or initiates the order (if the order is a proprietary order), has knowledge that the order is coupled with an order(s) for the underlying stock or a security convertible into the underlying stock ("convertible security" and, together with underlying stock, "non-option").

<sup>7</sup> A QCC order is an order to buy (sell) at least 1,000 standard option contracts or 10,000 mini-option contracts that is identified as being part of a qualified contingent trade coupled with a contra-side order to sell (buy) an equal number of contracts. These orders may only be entered in the standard increments applicable to simple orders in

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f).

orders and other tied to stock orders that the TPH executed on the Exchange that trading day. The Exchange stated in rule filing SR-CBOE-2014-040 that it would issue a circular announcing the implementation date for these rules within 90 days of the date of filing, which implementation date would be within 180 days of the date of filing.

On January 7, 2015, CBOE submitted a rule filing to delay the implementation of these rules based on feedback it received from TPHs.<sup>8</sup> The Exchange stated in that rule filing that it would issue a circular announcing the implementation date for the rules within 90 days of the date of the rule filing, which implementation date would be within 180 days of the date of filing. In accordance with that filing, the Exchange recently issued a regulatory circular on April 7, 2015, which announced a July 1, 2015 implementation date for the tied to stock marking and reporting requirements.<sup>9</sup>

While the Exchange believes there has been sufficient training and circulars provided to Trading Permit Holders on the marking requirement to move forward with implementation of that requirement on July 1, 2015, the Exchange believes it is appropriate to delay the implementation of the reporting requirement. Therefore, the

the options class under Rule 6.42. For purposes of this order type, a “qualified contingent trade” is a transaction consisting of two or more component orders, executed as agent or principal, where: (a) At least one component is an NMS stock, as defined in Rule 600 of Regulation NMS under the Act; (b) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (c) the execution of one component is contingent upon the execution of all other components at or near the same time; (d) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined by the time the contingent order is placed; (e) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (f) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade. QCC orders may execute without exposure provided the execution is not at the same price as a public customer order resting in the electronic book and is at or between the national best bid or offer. A QCC order will be cancelled if it cannot be executed. See Rule 6.53(u). The Exchange notes that it deactivated the QCC functionality effective August 11, 2014 and will announce any reactivation of QCC functionality by Regulatory Circular. See Regulatory Circular RG14-121.

<sup>8</sup> Securities Exchange Act Release No. 74067 (January 15, 2015), 80 FR 3267 (January 22, 2015) (SR-CBOE-2015-004) (notice of immediate effectiveness of rule filing).

<sup>9</sup> CBOE Regulatory Circular RG15-056 (April 7, 2015).

Exchange proposes to further delay the implementation date of the tied to stock reporting requirement for tied to stock orders.<sup>10</sup> During this time, the Exchange plans to evaluate the information obtained via the marking requirement under Rule 6.53(y) in conjunction with information available through other sources and further consider the reporting requirement format. In that regard, the Exchange notes that CBOE recently entered into a Regulatory Services Agreement with the Financial Industry Regulatory Authority, Inc. (“FINRA”). As a result, CBOE plans to evaluate the format of the reports with FINRA to ensure that the information to be provided in the reports can be incorporated into surveillances in an efficient and effective manner.<sup>11</sup> Therefore, the Exchange seeks to extend the implementation date of Rule 15.2A until the Exchange can conclude whether or not this additional information is necessary in order to enhance its ability to effectively monitor and conduct surveillance of the CBOE markets with respect to orders that are tied to stock whose execution information is not electronically captured by the audit trail.<sup>12</sup>

The Exchange expects its evaluation to be completed and to implement the reporting requirement within 12 to 18 months of the date of this filing. This will provide CBOE with sufficient time to conduct this evaluation and TPHs with sufficient time to implement any potential changes to the reporting requirement format. The Exchange will issue a regulatory circular announcing the new implementation date for the

<sup>10</sup> Pursuant to Regulatory Circular RG13-102, CBOE imposed a reporting requirement with respect to QCC orders prior to the adoption of Rule 15.2A. Once the Exchange implements Rule 15.2A, the reporting requirement in that rule will supersede the current QCC order reporting requirement described in that circular. As noted above, QCC functionality is currently not active. However, if the Exchange reactivates the functionality prior to implementation of Rule 15.2A, then the reporting requirement for QCC orders described in Regulatory Circular RG13-102 will continue to be in effect until the implementation of Rule 15.2A.

<sup>11</sup> During this delay, CBOE intends to review the number of tied to stock orders for which information regarding the stock or convertible security leg is not available from CBOE’s internal data, which will permit CBOE to evaluate the number of reports it can expect to receive and the potential impact of the reports on CBOE’s surveillances.

<sup>12</sup> The Exchange notes that Rule 15.2A, Interpretation .03 provides that a Market-Maker (or its clearing firm) may include the information required by Rule 15.2A in the equity reported submitted to CBOE pursuant to Rule 8.9(b). Because the proposed rule change is delaying the implementation of Rule 15.2A, Market-Makers (or their clearing firms) will continue to submit reports pursuant to Rule 8.9(b) in the same manner they do today.

reporting requirement as least 90 days prior to that date.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>13</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>14</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>15</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the delayed implementation of Rule 15.2A will provide the Exchange with sufficient time to evaluate the information obtained through the marking requirement and the related reporting requirement format to ensure that the Exchange receives reports from TPHs in a manner that can be incorporated into surveillance systems in an efficient and effective manner. This will ultimately improve the Exchange’s ability to tie executed non-option legs to the applicable option legs that were separately submitted for execution, which will assist in the Exchange’s efforts to prevent fraudulent and manipulative acts and practices with respect to tied to stock orders.

### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

CBOE 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 proposed change does not impose any burden on competition, as it is simply seeking to delay the implementation of the tied to stock reporting requirement.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> *Id.*

*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<sup>16</sup> and Rule 19b-4(f)(6)<sup>17</sup> 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](mailto: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. 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 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-CBOE-2015-051 and should be submitted on or before June 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-75031; File No. SR-NASDAQ-2015-023]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade the Shares of the Tuttle Tactical Management Multi-Strategy Income ETF of ETFis Series Trust I**

May 21, 2015.

**I. Introduction**

On March 25, 2015, The NASDAQ Stock Market LLC ("Exchange" or "Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>2</sup> and Rule 19b-4

thereunder,<sup>3</sup> a proposed rule change to list and trade shares ("Shares") of the Tuttle Tactical Management Multi-Strategy Income ETF ("Fund"), a series of ETFis Series Trust I ("Trust") under NASDAQ Rule 5735. The proposed rule change was published for comment in the **Federal Register** on April 10, 2015.<sup>4</sup> On May 20, 2015, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> The Fund is a series of the Trust.

ETFis 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.<sup>8</sup> 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

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 74653 (April 6, 2015), 80 FR 19371 ("Notice").

<sup>5</sup> In Amendment No. 1, the Exchange clarified that under normal market conditions, the Fund will invest only in those assets listed under the "Principal Investments" section of the Notice. Amendment No. 1 is not subject to notice and comment because it is a technical amendment that does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

<sup>6</sup> The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 30607 (July 23, 2013).

<sup>7</sup> See Registration Statement on Form N-1A for the Trust filed on January 30, 2015 (File Nos. 333-187668 and 811-22819).

<sup>8</sup> See Notice, *supra* note 4, 80 FR at 19372.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.