

### Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, and any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and the facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem at the NAV Creation Unit size aggregations of Shares of the Fund and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

### Rule 10b-17

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b-17(b). Based on the representations and the facts presented in the Letter, and subject to the conditions below, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust a conditional exemption from Rule 10b-17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10b-17 will not be implicated.<sup>6</sup>

### Conclusion

*It is hereby ordered*, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and facts

Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an "attempt to induce any person to bid for or purchase[] a covered security during the applicable restricted period" within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

<sup>6</sup> We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical in light of the Fund's nature because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

presented in the Letter, is exempt from the requirements of Rule 101 with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.

*It is further ordered*, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

*It is further ordered*, pursuant to Rule 10b-17(b)(2), that the Trust, based on the representations and the facts presented in the Letter and subject to the conditions below, is exempt from the requirements of Rule 10b-17 with respect to the transactions in the Shares of the Fund.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b-17, except for Rule 10b-17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. This exemption is based on the facts presented and the representations made in the Letter. Any different facts or representations may require a different response. Persons relying upon this exemptive relief shall discontinue transactions involving the Shares of the Fund, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors, and as is the case with all preceding letters, particularly with respect to the close alignment between the market price of Shares and the Fund's NAV. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws

must rest with the persons relying on this exemption. This Order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to, the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76121; File No. SR-FINRA-2015-037]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the TRACE Pilot Program in FINRA Rule 6730(e)(4)

October 9, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 28, 2015, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to extend the pilot program in FINRA Rule 6730(e)(4) to October 27, 2017. The pilot program exempts from TRACE reporting transactions in TRACE-Eligible Securities that are executed on a facility of the New York Stock Exchange

<sup>7</sup> 17 CFR 200.30-3(a)(6) and (9).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

(“NYSE”), subject to specified conditions.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### 6700. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

\* \* \* \* \*

#### 6730. Transaction Reporting

(a) through (d) No Change.

(e) Reporting Requirements for Certain Transactions and Transfers of Securities

The following shall not be reported:

(1) through (3) No Change.

(4) Provided that a data sharing agreement between FINRA and NYSE related to transactions covered by this Rule remains in effect, for a pilot program expiring on [October 23, 2015] *October 27, 2017*, transactions in TRACE-Eligible Securities that are executed on a facility of NYSE in accordance with NYSE Rules 1400, 1401 and 86 and reported to NYSE in accordance with NYSE’s applicable trade reporting rules and disseminated publicly by NYSE.

(5) through (6) No Change.

(f) No Change.

#### \* \* \* Supplementary Material:

.01 through .02 No Change.

\* \* \* \* \*

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

In its filing with the Commission, FINRA 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. FINRA 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

FINRA Rule 6730(e)(4) exempts members from reporting to the Trade Reporting and Compliance Engine (“TRACE”) transactions in TRACE-Eligible Securities<sup>4</sup> that are executed on

a facility of NYSE in accordance with specified NYSE rules and that are reported to NYSE and disseminated publicly, provided that a data sharing agreement between FINRA and NYSE related to transactions covered by FINRA Rule 6730 remains in effect. This exemption operates as a pilot program and is currently scheduled to expire on October 23, 2015.<sup>5</sup>

FINRA is proposing to extend the pilot program for two years until October 27, 2017. Thus, members would continue to be exempted from reporting to TRACE transactions in TRACE-Eligible Securities that are executed on an NYSE facility in accordance with NYSE Rules 1400, 1401 and 86, where such transactions are reported to NYSE in accordance with NYSE’s applicable trade reporting rules, and disseminated publicly by NYSE.<sup>6</sup>

FINRA is proposing to extend the pilot to provide additional time to analyze the impact of the exemption and to avoid duplicative reporting

private issuer, and, if a “restricted security” as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A; or is a debt security that is U.S. dollar-denominated and issued or guaranteed by an Agency as defined in paragraph (k) or a Government-Sponsored Enterprise as defined in paragraph (n). “TRACE-Eligible Security” does not include a debt security that is: Issued by a foreign sovereign, a U.S. Treasury Security as defined in paragraph (p), or a Money Market Instrument as defined in paragraph (o).

<sup>5</sup> See Securities Exchange Act Release No. 54768 (November 16, 2006), 71 FR 67673 (November 22, 2006) (Order Approving File No. SR-NASD-2006-110) (pilot program in FINRA Rule 6730(e)(4), subject to the execution of a data sharing agreement addressing relevant transactions, became effective on January 9, 2007); Securities Exchange Act Release No. 59216 (January 8, 2009), 74 FR 2147 (January 14, 2009) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2008-065) (pilot program extended to January 7, 2011); Securities Exchange Act Release No. 63673 (January 7, 2011), 76 FR 2739 (January 14, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2011-002) (pilot program extended to July 8, 2011); Securities Exchange Act Release No. 64665 (June 14, 2011), 76 FR 35933 (June 20, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2011-025) (pilot program extended to January 27, 2012); Securities Exchange Act Release No. 66018 (December 21, 2011), 76 FR 81549 (December 28, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2011-072) (pilot program extended to October 26, 2012); Securities Exchange Act Release No. 68076 (October 22, 2012), 77 FR 65431 (October 26, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2012-047) (pilot program extended to October 25, 2013); and Securities Exchange Act Release No. 70288 (August 29, 2013), 78 FR 54694 (September 5, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2013-038) (pilot program extended to October 23, 2015).

<sup>6</sup> The success of the pilot program remains dependent on FINRA’s ability to continue to effectively conduct surveillance for TRACE-Eligible Securities. The exemption, therefore, continues to be conditional on a data sharing agreement being in effect between FINRA and NYSE related to transactions covered by FINRA Rule 6730.

requirements for members with regard to transactions in these securities, which otherwise would be subject to trade reporting to both FINRA and NYSE. However, FINRA supports a regulatory construct that, in the future, consolidates all last sale transaction information to provide better price transparency and a more efficient means to engage in market surveillance of TRACE-Eligible Securities transactions. The proposed extension would allow the pilot program to continue to operate without interruption while FINRA and NYSE continue to assess the effect of the exemption and issues regarding the consolidation of market data, market surveillance and price transparency.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be October 23, 2015.

#### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that extension of the pilot protects investors and the public because it continues to ensure that transactions are required to be reported and publicly disseminated; therefore, transparency will be maintained for these transactions. The continued condition that a data sharing agreement remain in effect between NYSE and FINRA for transactions covered by the FINRA Rule 6730(e)(4) exemption allows FINRA to continue to conduct surveillance in TRACE-Eligible Securities. In addition, extending the exemption permits members that are subject to both FINRA’s and NYSE’s trade reporting requirements to avoid a duplicative regulatory structure and the increased costs that may be incurred as a result of such duplicative requirements.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that the extension of the exemptive provision does not result in any burden on competition since it allows members that are subject to both

<sup>4</sup> Rule 6710(a) provides that a “TRACE-Eligible Security” is a debt security that is United States dollar-denominated and issued by a U.S. or foreign

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

FINRA's and NYSE's trade reporting requirements to avoid a duplicative regulatory structure and the increased costs that may be incurred as a result of such duplicative requirements.

*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**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)<sup>9</sup> thereunder.

FINRA has asked the Commission to waive the 30-day operative delay so that the pilot may continue to operate without interruption. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. This action will continue to allow the benefits of the pilot—preventing duplicative reporting of transactions in TRACE-Eligible Securities that occur on NYSE—to continue without interruption. Therefore, the Commission hereby designates the proposed rule change as operative upon filing.<sup>10</sup>

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.

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

<sup>9</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), FINRA provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>10</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

**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-FINRA-2015-037 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-FINRA-2015-037. 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 will also be available for inspection and copying at the principal office of FINRA. 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-FINRA-2015-037 and should be submitted on or before November 6, 2015.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-76126; File No. SR-NASDAQ-2015-095]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of the Shares of the AltShares Long/Short High Yield Fund of ETFs Series Trust I**

October 9, 2015.

**I. Introduction**

On August 7, 2015, The NASDAQ Stock Market LLC (the "Exchange" or "Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the AltShares Long/Short High Yield Fund ("Fund") of ETFs Series Trust I ("Trust") under NASDAQ Rule 5735. The proposed rule change was published for comment in the **Federal Register** on August 25, 2015.<sup>3</sup> The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

**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>4</sup> which is registered with the Commission as an investment company and has filed a registration statement on Form N-1A ("Registration Statement")

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

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

<sup>3</sup> See Securities Exchange Act Release No. 75738 (August 19, 2015), 80 FR 51632 ("Notice").

<sup>4</sup> According to the Exchange, the Adviser (as defined herein) has obtained certain exemptive relief, upon which the Trust may rely, under the Investment Company Act of 1940 ("1940 Act"). See Investment Company Act Release No. 30607 (July 23, 2013) (File No. 812-14080).