

**POSTAL REGULATORY COMMISSION**

[Docket Nos. MC2015–23 and CP2015–29;  
Order No. 2314]

**New Postal Product**

**AGENCY:** Postal Regulatory Commission.  
**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of Global Expedited Package Services–Non-Published Rates Contract 5 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* January 7, 2015.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:****Table of Contents**

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**I. Introduction**

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, and Order Nos. 630,<sup>1</sup> 1625,<sup>2</sup> and 1959,<sup>3</sup> the Postal Service filed a formal request and associated supporting information to add Global Expedited Package Services–Non-Published Rates Contract 5 (GEPS–NPR 5) to the competitive product list.<sup>4</sup> The Postal Service states the addition of GEPS–NPR 5 to the competitive products list is necessary due to its creation of both a Management Analysis

<sup>1</sup> Docket No. CP2011–45, Order Adding Global Expedited Package Services–Non-Published Rates 2 to the Competitive Product List, December 30, 2010 (Order No. 630).

<sup>2</sup> Docket Nos. MC2013–27 and CP2013–35, Order Adding Global Expedited Package Services–Non-Published Rates 4 (GEPS–NPR 4) to the Competitive Product List, January 16, 2013 (Order No. 1625).

<sup>3</sup> Docket Nos. MC2013–27 and CP2014–22, Order Approving Change in Prices for Global Package Services–Non-Published Rates 4 (GEPS–NPR 4), January 10, 2014 (Order No. 1959).

<sup>4</sup> Request of the United States Postal Service to Add Global Expedited Package Services–Non-Published Rates 5 (GEPS–NPR 5) to the Competitive Product List and Notice of Filing GEPS–NPR 5 Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal, December 24, 2014 (Request).

of the Prices and Methodology for Determining Prices for Negotiated Service Agreements under Global Expedited Package Services–Non-Published Rates 5 (GEPS–NPR 5 Management Analysis), and an accompanying financial model that revises the previously filed GEPS–NPR 4 Version 2 Management Analysis and its financial model. Request at 3.

To support its Request, the Postal Service filed the following attachments:

- Attachment 1, an application for non-public treatment of materials filed under seal;
- Attachment 2A, a redacted version of Governors' Decision No. 11–6;
- Attachment 2B, a revised version of the Mail Classification Schedule section 2510.8 GEPS–NPR;
- Attachment 2C, a redacted version of GEPS–NPR 5 Management Analysis;
- Attachment 2D, a list of Maximum and Minimum Prices for Priority Mail Express International (PMEI), and Priority Mail International (PMI), and Global Express Guaranteed (GXG);
- Attachment 2E, a certified statement concerning the prices for applicable negotiated service agreements under GEPS–NPR 5, as required by 39 CFR 3015.5(c)(2);
- Attachment 3, a Statement of Supporting Justification, similar to the Statement of Supporting Justifications used to support the classification of GEPS–NPR 3 and GEPS–NPR 4, and which is filed pursuant to 39 CFR 3020.32; and
- Attachment 4, a redacted version of the GEPS–NPR 5 model contract.

In a Statement of Supporting Justification, Giselle Valera, Managing Director and Vice President, Global Business, asserts the product is designed to increase efficiency of the Postal Service's process, as well as enhance its ability to compete in the marketplace. Request, Attachment 3 at 1. She contends GEPS–NPR 5 belongs on the competitive product list as it is part of a market over which the Postal Service does not exercise market dominance,<sup>5</sup> is not subsidized by market dominant products, covers costs attributable to it, and does not cause competitive products as a whole to fail to make the appropriate contribution to institutional costs. *Id.* at 1, 3.

The Postal Service included a redacted version of the GEPS–NPR 5 model contract with the Request. *Id.*

<sup>5</sup> The Postal Service claims it does not exercise sufficient market power to set the price of PMEI, PMI, and GXG substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products. *Id.* at 4; 39 U.S.C. 3642(b).

Attachment 4. The Postal Service represents the GEPS–NPR 5 model contract is a slight modification of the GEPS–NPR 4 Version 2 model contract approved by the Commission in Order No. 1959.<sup>6</sup>

The Postal Service represents it will notify each GEPS–NPR 5 customer of the contract's effective date no later than 30 days after receiving the signed agreement from the customer. *Id.* Attachment 4 at 4. Each contract will expire the later of one year from the effective date or the last day of the month which falls one calendar year from the effective date, unless terminated sooner. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). Request at 11; *id.* Attachment 4.

The Postal Service filed much of the supporting materials, including the related model contract, under seal. Request, Attachment 1. It maintains that the redacted portions of the materials should remain confidential as sensitive business information. *Id.* at 4. This information includes sensitive commercial information concerning the incentive discounts and their formulation, applicable cost-coverage, non-published rates, as well as some customer-identifying information. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure for ten years after the date of filing with the Commission, unless an order is entered to extend the duration of that status. *Id.* at 9.

**II. Notice of Commission Action**

The Commission establishes Docket Nos. MC2015–23 and CP2015–29 to consider the Request pertaining to the proposed Global Expedited Package Services–Non-Published Rates 5 product and the related model contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than January 7, 2015. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

**III. Ordering Paragraphs***It is ordered:*

1. The Commission establishes Docket Nos. MC2015–23 and CP2015–29 to

<sup>6</sup> See Order No. 1959.

consider the matters raised in each docket.

2. 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).

3. Comments are due no later than January 7, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**  
Secretary.

[FR Doc. 2014-30968 Filed 1-5-15; 8:45 am]

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## 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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 (the “Fund”), a series of ETFis Series Trust I (the “Trust”), under Nasdaq Rule 5735 (“Managed Fund Shares”).<sup>3</sup> The shares

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

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

<sup>3</sup> The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008) 73 FR 35175 (June 20, 2008) (SR-NASDAQ-2008-039). There are already multiple actively-managed funds listed on the Exchange; see e.g., Securities Exchange Act Release No. 72411 (June 17, 2014), 79 FR 35598 (June 23, 2014) (SR-NASDAQ-2014-40) (order approving listing and trading of Calamos Focus Growth ETF). The

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 Shares<sup>4</sup> 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.<sup>5</sup> The Trust is registered with the Commission as an investment company and has filed a

Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

<sup>4</sup> A Managed Fund Share is a security that represents an interest in an investment company registered 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.

<sup>5</sup> 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. 30607 (July 23, 2013). 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 Securities Act of 1933 (15 U.S.C. 77a).

registration statement on Form N-1A (“Registration Statement”) with the Commission.<sup>6</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 (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 information concerning the composition and/or changes to such investment company portfolio.<sup>7</sup> 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

<sup>6</sup> See Registration Statement on Form N-1A for the Trust filed on July 24, 2014 (File Nos. 333-187668 and 811-22819). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

<sup>7</sup> 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 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted 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 the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.