

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83146; File No. SR-CboeBZX-2018-029)

May 1, 2018

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Allow the Horizons Cadence Hedged US Dividend Yield ETF, a Series of the Horizons ETF Trust I, to Hold Listed Options Contracts in a Manner that Does Not Comply with Rule 14.11(i), Managed Fund Shares

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 April 17, 2018, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) 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 the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ which renders it effective upon filing with 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

The Exchange filed a proposal to allow the Horizons Cadence Hedged US Dividend Yield ETF (the “Fund”), a series of the Horizons ETF Trust I (the “Trust”), to hold listed options contracts in a manner that does not comply with Rule 14.11(i) (“Managed Fund Shares”). The shares of the Fund are referred to herein as the “Shares.”

The text of the proposed rule change is available at the Exchange’s website at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

www.markets.cboe.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 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 parts of such statements.

(A) Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Fund is currently listed on the Exchange pursuant to the generic listing standards under Rule 14.11(i) governing Managed Fund Shares.⁵ The Exchange proposes to continue listing and trading the Shares. The Shares would continue to comply with all of the generic listing standards with the exception of the requirement of Rule 14.11(i)(4)(C)(iv)(b) that prevents the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures) (the “30% Restriction”).^{6,7}

⁵ The Commission originally approved BZX Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018) and subsequently approved generic listing standards for Managed Fund Shares under Rule 14.11(i) in Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR-BATS-2015-100).

⁶ Rule 14.11(i)(4)(C)(iv)(b) provides that “the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate

The Shares are offered by the Trust, which was established as a Delaware statutory trust on May 17, 2012. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Fund on Form N-1A with the Commission.⁸ The Fund’s adviser, Horizons ETFs Management (US) LLC (the “Adviser”), is not registered as a broker-dealer, but is affiliated with two broker-dealers. The Adviser represents that a fire wall exists and will be maintained between the respective personnel at the Adviser and affiliated broker-dealers with respect to access to information concerning the composition and/or changes to the Fund’s portfolio. Personnel who make decisions on the Fund’s portfolio composition are currently and shall continue to be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund’s sub-adviser, Cadence Capital Management LLC (the “Sub-Adviser”), is

gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).” The Exchange is proposing that the Fund be exempt only from the requirement of Rule 14.11(i)(4)(C)(iv)(b) that prevents the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures). The Fund will meet the requirement that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures).

⁷ The Exchange notes that this proposal is very similar to a previously approved proposal to list and trade a series of Managed Fund Shares on the Exchange with similar exposures to a single underlying reference asset and U.S. exchange-listed equity securities. See Securities Exchange Act Release No. 80529 (April 26, 2017), 82 FR 20506 (May 2, 2017) (SR-BatsBZX-2017-14).

⁸ The Trust filed a post-effective amendment to the Registration Statement on February 9, 2018 (the “Registration Statement”). See Registration Statement on Form N-1A for the Trust (File Nos. 333-183155 and 811-22732). The descriptions of the Fund and the Shares contained herein are based, in part, on information included in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust and affiliated persons under the Investment Company Act of 1940 (15 U.S.C. 80a-1). See Investment Company Act Release No. 30695 (September 24, 2013) (File No. 812-14178).

not registered as a broker-dealer and is not affiliated with a broker-dealer. Sub-Adviser personnel who make decisions on the Fund's portfolio composition are currently and shall continue to be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. In the event that (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer; or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer; the Adviser, Sub-Adviser, or such new adviser or sub-adviser will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

Horizons Cadence Hedged US Dividend Yield ETF

The Fund seeks income and long-term growth of capital. In order to achieve its investment objective, under Normal Market Conditions,⁹ the Fund will invest at least 80% of its assets in equity securities of U.S. exchange-listed companies that pay regular dividends ("U.S. Equities"). The Fund's holdings in U.S. Equities currently meet and will continue to meet the generic listing standards for U.S. Component Stocks in Rule 14.11(i)(4)(C)(i)(a). The Fund has the ability to buy and sell call and put options on the S&P 500 Index ("S&P 500 Index

⁹ The term "Normal Market Conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

Options”). The S&P 500 Index is the index most correlated to the Fund's underlying equity holdings. The options overlay seeks to potentially provide a measure of downside protection and an additional component to the Fund's risk management. The options overlay is actively managed by the Adviser and will adapt to both changing market environments and shifts in the underlying equity holdings of the Fund, but is currently limited by the requirement under Rule 14.11(i)(4)(C)(iv)(b) that prevents the aggregate gross notional exposure of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures).

As noted above, Rule 14.11(i)(4)(C)(iv)(b) prevents the Fund from holding listed derivatives based on any single underlying reference asset in excess of 30% of the weight of its portfolio (including gross notional exposures). As proposed, the Fund would hold up to 50% of the weight of its portfolio (including gross notional exposures) in S&P 500 Index Options, which are traded on Cboe Exchange, Inc. (“Cboe Options”).¹⁰ The Fund will utilize S&P 500 Index Options to create a collar strategy through selling call options and buying protective put options. This may serve as a buffer to market selloffs, which may lower the volatility of the portfolio. Greater exposure to the S&P 500 through the options would allow the Fund the flexibility to fully implement its risk mitigation strategy. The Exchange notes that the Fund may also hold cash and Cash Equivalents¹¹ in compliance with Rule 14.11(i)(4)(C)(iii).

¹⁰ The Commission has previously approved a series of Managed Fund Shares that can hold up to 60% of the weight of its portfolio in listed derivatives based on the S&P 500 Index as the only underlying reference asset. See Securities Exchange Act Release No. 82906 (March 20, 2018), 83 FR 12992 (March 26, 2018) (SR-CboeBZX-2017-012) (order approving the listing and trading of the LHA Market State Tactical U.S. Equity ETF).

¹¹ As defined in Exchange Rule 14.11(i)(4)(C)(iii)(b), Cash Equivalents are short-term instruments with maturities of less than three months, which includes only the following: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity

As noted above, the Fund's investment in U.S. Equities under Normal Market Conditions constitutes at least 80% of the Fund's assets and such holdings will meet the requirements for U.S. Component Stocks in Rule 14.11(i)(4)(C)(i)(a). In addition to such U.S. Equities holdings, the Fund may hold up to 20% of its assets in cash, Cash Equivalents, and the value of S&P 500 Index Options positions under Normal Market Conditions. The combination of U.S. Equities, cash, Cash Equivalents, and the cash value of S&P 500 Index Options will constitute the entirety of the Fund's holdings and the cash value of these holdings will be used to form the basis for these calculations. The Exchange notes that this is different than the calculation used to measure the Fund's holdings in S&P 500 Index Options as it relates to the Fund holding up to 50% of the weight of its portfolio, which, as noted above, is calculated using gross notional exposures gained through the S&P 500 Index Options in both the numerator and denominator, which is consistent with the derivatives exposure calculation under Rule 14.11(i)(4)(C)(iv). The Exchange represents that, except for the 30% Restriction in Rule 14.11(i)(4)(C)(iv)(b), the Fund's investments will continue to satisfy all of the generic listing standards under BZX Rule 14.11(i)(4)(C) and all other applicable requirements for Managed Fund Shares under Rule 14.11(i).

The Trust is required to comply with Rule 10A-3 under the Act for the initial and continued listing of the Shares of the Fund. In addition, the Exchange represents that the Shares

and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

of the Fund will continue to comply with all other requirements applicable to Managed Fund Shares, which include the dissemination of key information such as the Disclosed Portfolio,¹² Net Asset Value,¹³ and the Intraday Indicative Value,¹⁴ suspension of trading or removal,¹⁵ trading halts,¹⁶ surveillance,¹⁷ minimum price variation for quoting and order entry,¹⁸ the information circular,¹⁹ and firewalls²⁰ as set forth in Exchange rules applicable to Managed Fund Shares and the orders approving such rules. Moreover, all of the U.S. Equities and S&P 500 Index Options held by the Fund will trade on markets that are a member of Intermarket Surveillance Group (“ISG”) or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²¹ All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset and intraday indicative values (as applicable), or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The Fund has represented to the Exchange that it will advise the Exchange of any failure by the Fund or Shares

¹² See Rule 14.11(i)(4)(A)(ii) and 14.11(i)(4)(B)(ii).

¹³ See Rule 14.11(i)(4)(A)(ii).

¹⁴ See Rule 14.11(i)(4)(B)(i).

¹⁵ See Rule 14.11(i)(4)(B)(iii).

¹⁶ See Rule 14.11(i)(4)(B)(iv).

¹⁷ See Rule 14.11(i)(2)(C).

¹⁸ See Rule 14.11(i)(2)(B).

¹⁹ See Rule 14.11(i)(6).

²⁰ See Rule 14.11(i)(7).

²¹ For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under Exchange Rule 14.12.

Availability of Information

As noted above, the Fund will comply with the requirements under the Rule 14.11(i) related to Disclosed Portfolio, NAV, and the intraday indicative value. Additionally, the intraday, closing and settlement prices of exchange-traded portfolio assets, specifically the U.S. Equities and S&P 500 Index Options, will be readily available from the exchanges trading such securities or derivatives, as the case may be, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Quotation and last sale information for S&P 500 Index Options will be available via the Options Price Reporting Authority. Price information for Cash Equivalents will be available from major market data vendors. The Disclosed Portfolio will be available on the Fund's website (www.horizonsetfs.com) free of charge. The Fund's website will include a form of the prospectus for the Fund and additional information related to NAV and other applicable quantitative information. Information regarding market price and trading volume of the Shares will be continuously available throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume for the Shares will be published daily in the financial section of newspapers. Trading in the

Shares may be halted for market conditions or for reasons that, in the view of the Exchange, make trading inadvisable. The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions. The Exchange prohibits the distribution of material non-public information by its employees. Quotation and last sale information for the Shares and U.S. Equities will be available via the CTA high-speed line.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²² in general and Section 6(b)(5) of the Act²³ 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, 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 in that the Shares will meet each of the continued listing criteria in BZX Rule 14.11(i) with the exception of the 30% Restriction in Rule 14.11(i)(4)(C)(iv)(b), which requires that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).²⁴ The Exchange

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

²⁴ As noted above, the Exchange is proposing that the Fund be exempt only from the 30% Restriction of Rule 14.11(i)(4)(C)(iv)(b) that prevents the aggregate gross notional value

believes that the liquidity in the S&P 500 Index Options markets mitigates the concerns that Rule 14.11(i)(4)(C)(iv)(b) is intended to address and that such liquidity would prevent the Shares from being susceptible to manipulation.²⁵ Further, allowing the Fund to hold a greater portion of its portfolio in S&P 500 Index Options would mean that the Fund would not be required to use over-the-counter (“OTC”) derivatives if the Adviser deemed it necessary to get exposure in excess of the 30% Restriction in Rule 14.11(i)(4)(C)(iv)(b), which would reduce the Fund’s operational burden by allowing the Fund to use listed options contracts to achieve its investment objective and would eliminate the counter-party risk associated with holding OTC derivative instruments. The Exchange further believes that the diversity, liquidity, and market cap of the securities underlying the S&P 500 Index are sufficient to protect against market manipulation of both the Fund’s holdings and the Shares as it relates to the S&P 500 Index Options holdings.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. All of the U.S. Equities and S&P 500 Index Options contracts held by the Fund will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange may obtain information regarding trading in the Shares, U.S. Equities, and the S&P 500 Index Options held by the Fund via the ISG from other exchanges who are a member of ISG or affiliated with a member of ISG or with

of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures). The Fund will continue to meet the requirement that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures).

²⁵ In February 2018, the total notional volume traded was approximately \$9.4 trillion in S&P 500 Index Options.

which the Exchange has entered into a comprehensive surveillance sharing agreement.²⁶ The Exchange further notes that the Fund will meet and be subject to all other requirements of the generic listing rules and other applicable continued listing requirements for Managed Fund Shares under Rule 14.11(i), including those requirements regarding the dissemination of key information such as the Disclosed Portfolio, Net Asset Value, and the Intraday Indicative Value, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, the information circular, and firewalls as set forth in Exchange rules applicable to Managed Fund Shares.

For the above reasons, the Exchange believes that 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 purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the options strategy of an actively-managed exchange-traded product that will allow the Fund to better compete in the marketplace, thus enhancing competition among both market participants and listing venues, to the benefit of investors and the marketplace.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

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

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

²⁶ See note 21, supra.

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 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 Act²⁷ and Rule 19b-4(f)(6) thereunder.²⁸

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²⁹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)³⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Commission notes that waiver of the operative delay would allow the Fund to hold up to 50% of the weight of its portfolio (including gross notional exposures) in S&P 500 Index Options without delay, and thus allow the Fund to fully implement its risk mitigation strategy without delay. The Commission notes that, other than the 30% Restriction with respect to S&P 500 Index Options, the Fund would continue to satisfy all of the generic listing standards under BZX Rule 14.11(i)(4)(C) and all other requirements applicable to Managed Fund Shares. The Commission believes that waiver of the 30-day operative delay is consistent with the protection

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

²⁹ 17 CFR 240.19b-4(f)(6).

³⁰ 17 CFR 240.19b-4(f)(6)(iii).

of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.³¹

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 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 e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2018-029 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-CboeBZX-2018-029. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

³¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<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 website 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.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2018-029 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Eduardo A. Aleman
Assistant Secretary

³² 17 CFR 200.30-3(a)(12).