

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75566; File No. SR-NYSEArca-2015-42)

July 30, 2015

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, to List and Trade of Shares of Newfleet Multi-Sector Unconstrained Bond ETF under NYSE Arca Equities Rule 8.600

I. Introduction

On June 5, 2015, NYSE Arca, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the Newfleet Multi-Sector Unconstrained Bond ETF (“Fund”), a series of the ETFis Series Trust I (“Trust”) under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. On June 15, 2015, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission published notice of the proposed rule change, as modified by Amendment No. 1 thereto, in the Federal Register on June 24, 2015.⁴ On July 23, 2015, the Exchange filed Amendment No. 2 to the proposed rule change.⁵ The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 to the proposed rule change replaced and superseded the original filing in its entirety.

⁴ See Securities Exchange Act Release No. 75247 (June 18, 2015), 80 FR 36372 (“Notice”).

⁵ Amendment No. 2 clarified that the Adviser expects that, under normal market conditions, the Fund will seek to invest at least 75% of its corporate bond assets in issuances that have at least \$100,000,000 par amount outstanding in developed countries or at least \$200,000,000 par amount outstanding in emerging market countries. Because it only makes this clarification and does not materially affect the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 2 to the proposed rule change does not require notice and comment. The text of Amendment No. 2 is available at: <http://www.sec.gov/comments/sr-nysearca-2015-42/nysearca201542-2.pdf>.

Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendments No. 1 and No. 2.

II. The Exchange's Description of the Proposal⁶

NYSE Arca proposes to list and trade Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Trust, which is registered with the Commission as an investment company.⁷ The investment adviser to the Fund will be Etfis Capital LLC ("Adviser"), and the sub-adviser to the Fund will be Newfleet Asset Management LLC ("Sub-Adviser").⁸ ETF Issuer Solutions Inc. will serve as the Fund's operational administrator. ETF Distributors LLC will serve as the distributor, and the Bank of New York Mellon will serve as the administrator, custodian, transfer agent and fund accounting agent for the Fund.

⁶ The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, calculation of net asset value ("NAV"), distributions, and taxes, among other things, can be found in the Notice and the Registration Statement, as applicable. See Notice, supra note 3, and Registration Statement, infra note 7.

⁷ The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). The Exchange states that on January 26, 2015, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act") and under the 1940 Act relating to the Fund (File Nos. 333-187668 and 811-22819) ("Registration Statement").

⁸ The Adviser and Sub-Adviser are not registered as broker-dealers, but each is affiliated with one or more broker-dealers and has implemented and will maintain a fire wall with respect to each such broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio. In the event (a) the Adviser or Sub-Adviser become registered broker-dealers 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, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio, and it will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Fund's investment objective is to provide a high level of current income and, secondarily, capital appreciation. Under normal market conditions,⁹ the Sub-Adviser will seek to select securities using a sector rotation approach and seek to adjust the proportion of Fund investments in various sectors and sub-sectors in an effort to obtain higher relative returns.

A. The Fund's Principal Investments

Under normal market conditions, at least 80% of the Fund's net assets will be invested in the fixed income securities identified below and in U.S. Treasury futures. The Fund may invest across the credit-rating spectrum, which includes securities rated below investment grade by a nationally recognized statistical rating organization ("NRSRO"), and in unrated securities. The Fund has no target duration for its investment portfolio.

The Fund may invest in the following fixed income securities:

- securities issued or guaranteed as to principal and interest by the U.S. Government, or by its agencies, authorities or instrumentalities, including, without limitation, collateralized mortgage obligations ("CMOs"), real estate mortgage investment conduits, and other pass-through securities;

⁹ The term "under normal market conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. In the absence of normal market conditions, the Fund may invest 100% of its total assets, without limitation, in cash or cash equivalents. The Fund may be invested in this manner for extended periods depending on the Sub-Adviser's assessment of market conditions.

- non-agency¹⁰ commercial mortgage-backed securities (“CMBS”), agency and non-agency residential mortgage-backed securities (“RMBS”), and other asset-backed securities (“ABS”), including equipment trust certificates;¹¹
- Yankee bonds;¹²
- loan assignments, including senior and junior bank loans (generally with floating rates);¹³
- corporate bonds;¹⁴ and
- taxable municipal bonds and tax-exempt municipal bonds.

Generally, the portfolio will include a minimum of 13 non-affiliated issuers of debt securities, and the Fund will only purchase performing securities, not distressed debt.¹⁵

¹⁰ “Non-agency” securities are financial instruments that have been issued by an entity that is not a government-sponsored agency such as the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Home Loan Banks, or the Government National Mortgage Association.

¹¹ The Fund may invest up to 20% of its net assets in the aggregate in non-agency CMBS, RMBS, and ABS.

¹² Yankee bonds are denominated in U.S. dollars, registered in accordance with the Securities Act and publicly issued in the U.S. by foreign banks and corporations.

¹³ The Fund may invest in loan assignments, including senior and junior bank loans, rated C or higher by an NRSRO or unrated but considered to be of comparable quality by the Adviser or Sub-Adviser. The Fund will not invest in loan assignments that are in default at time of purchase. The Fund will only invest in U.S. dollar-denominated loan assignments. In addition, for investment purposes, a bank loan must have a par amount outstanding of U.S. \$150 million or greater at the time it is originally issued. The Fund may invest up to 20% of its net assets in junior bank loans. The Adviser generally will invest in loan assignments, including bank loans, that it deems highly liquid, with readily available prices.

¹⁴ The Adviser expects that under normal market conditions, the Fund will seek to invest at least 75% of its corporate bond assets in issuances that have at least \$100,000,000 par amount outstanding in developed countries or at least \$200,000,000 par amount outstanding in emerging market countries. See Amendment No. 2, supra note 5.

¹⁵ Distressed debt is debt that is currently in default and is not expected to pay the current coupon.

The Fund may invest in U.S. Treasury futures contracts traded on U.S. futures exchanges to attempt to protect the Fund's current or intended investments from broad fluctuations in securities prices.

B. The Fund's Non-Principal Investments

While the Fund, under normal market conditions, will invest at least 80% of its assets in the fixed income securities and financial instruments identified above, the Fund may invest its remaining assets in other assets and financial instruments, as described below.

The Fund may hold the following exchange-traded equity securities: common stocks, preferred stocks, warrants, convertible securities, unit investment trusts, master limited partnerships, real estate investment trusts ("REITs"), exchange-traded funds ("ETFs"),¹⁶ and exchange-traded notes ("ETNs").¹⁷ These equity securities will be traded in the U.S. on registered exchanges.

To gain exposure to the performance of foreign issuers, the Fund may also invest in the following types of equity securities: American Depositary Receipts ("ADRs"); "ordinary shares" and "New York shares" (each of which is issued and traded in the U.S.); and Global Depositary Receipts, European Depositary Receipts, and International Depositary Receipts, which are traded on foreign exchanges.¹⁸

With respect to its exchange-traded equity securities, the Fund will normally invest in equity securities that are listed and traded on a U.S. exchange or in markets that are members of

¹⁶ The Fund may invest in inverse ETFs, leveraged ETFs and inverse leveraged ETFs (e.g., 2X or 3X).

¹⁷ The Fund will not invest in leveraged ETNs and inverse leveraged ETNs (e.g., 2X or 3X).

¹⁸ The Fund may invest in sponsored or unsponsored ADRs; however, non-exchange listed ADRs will not exceed 10% of the Fund's net assets.

the Intermarket Surveillance Group (“ISG”) or parties to a comprehensive surveillance sharing agreement with the Exchange. In any case, not more than 10% of the net assets of the Fund in the aggregate invested in exchange-traded equity securities will consist of equity securities whose principal market is not a member of ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Fund may invest in, to the extent permitted by Section 12(d)(1) of the 1940 Act and the rules thereunder,¹⁹ other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies (“closed-end funds”), including other ETFs. The Fund may also invest in the securities of other investment companies in compliance with Section 12(d)(1)(E), (F) and (G) of the 1940 Act and the rules thereunder.²⁰

The Fund may invest in exchange-traded securities of pooled vehicles that are not investment companies and, thus, not required to comply with the provisions of the 1940 Act, although such pooled vehicles would be required to comply with the provisions of other federal securities laws, such as the Securities Act. These pooled vehicles typically hold commodities, such as gold or oil; currency; or other property that is itself not a security.²¹

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange’s proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder

¹⁹ 15 U.S.C. 80a-12(d)(1).

²⁰ 15 U.S.C. 80a-12(d)(1)(E),(F) and (G).

²¹ Exchange-traded pooled investment vehicles include Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Trust Units (as described in NYSE Arca Equities Rule 8.500).

applicable to a national securities exchange.²² In particular, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Exchange Act,²³ which requires, among other things, that the Exchange’s rules be designed to promote just and equitable principles of trade, 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. The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,²⁴ which sets forth the finding of Congress 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 the underlying U.S. exchange-traded equity securities will be available via the Consolidated Tape Association (“CTA”) high-speed line, and from the national securities exchange on which they are listed. In addition, the intraday indicative value or “IIV” (which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3)) will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.²⁵ On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund’s

²² In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

²⁵ Currently, it is the Exchange’s understanding that several major market data vendors display or make widely available IIVs taken from CTA or other data feeds.

website will publish the Disclosed Portfolio²⁶ that will form the basis for the Fund's calculation of NAV at the end of the business day.²⁷

The NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Pricing information regarding each asset class in which the Fund will invest will generally be available through nationally recognized data service providers through subscription agreements. Foreign exchange prices are available from major market data vendors. Intra-day and closing price information for Rule 144A fixed income securities and loan assignments will be available from major market data vendors. Price information for investment company securities (other than ETFs and exchange-traded closed end funds) will be available from the investment company's website and from market data vendors. Quotation information from brokers and dealers or pricing services will be available for unsponsored ADRs; fixed income securities; bank loans; U.S. Treasury securities; other obligations issued or guaranteed by U.S. government agencies or instrumentalities; bank obligations; short-term securities; money market instruments; ABS; MBS; CMBS; RMBS; CMOs; shares of mutual funds; corporate debt securities; and convertible securities.

²⁶ The term "Disclosed Portfolio" is defined in NYSE Arca Equities Rule 8.600(c)(2).

²⁷ Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

The Commission further 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. 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. Trading in Shares of the Fund will be halted if the circuit-breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. 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.²⁸ Trading in the Shares also will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Adviser and Sub-Adviser are not registered as broker-dealers but are affiliated with two broker-dealers and have implemented and will maintain a fire wall with respect to each such broker-dealer affiliate.²⁹

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders (“ETP Holders”) in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial

²⁸ These may include: (1) the extent to which trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

²⁹ See supra note 8. The Exchange represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940.

Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.³⁰

The Exchange represents that it 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. In support of this proposal, the Exchange has also made the following representations:

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) Trading in the Shares will be subject to the existing trading surveillances, administered by 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 federal securities laws applicable to trading on the Exchange.
- (4) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-traded equity securities and futures contracts with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-traded equity securities and futures contracts from such markets and other entities. In addition, the Exchange may obtain information regarding

³⁰ The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

trading in the Shares, exchange-traded equity securities and futures contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.³¹ FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.

- (5) Prior to the commencement of trading of the Shares, the Exchange will inform its ETP Holders in a Bulletin of the special characteristics and risks associated with trading the Shares. The Bulletin will discuss the following: (i) the procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (ii) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (iii) the risks involved in trading the Shares during the Opening and Late Trading Sessions (as defined in NYSE Arca Equities 7.34) when an updated IIV or Index value will not be calculated or publicly disseminated; (iv) how information regarding the IIV, the Disclosed Portfolio, and the Index value will be disseminated; (v) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information.

³¹ For a list of the current members of ISG, see www.isgportal.org. 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.

- (6) For initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Exchange Act,³² as provided by NYSE Arca Equities Rule 5.3.
- (7) Not more than 20% of the Fund's net assets in the aggregate will be invested in non-agency CMBS, RMBS, and ABS.
- (8) Not more than 20% of the Fund's net assets will be invested in junior bank loans.
- (9) The Fund will invest only in U.S. dollar-denominated loan assignments, and for investment purposes, a bank loan must have a par amount outstanding of U.S. \$150 million or greater at the time it is originally issued. Furthermore, the Adviser will invest generally in loan assignments, including bank loans, which it deems to be highly liquid, with readily available prices.
- (10) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A fixed income securities and bank loans that are deemed illiquid by the Adviser, consistent with Commission guidance.
- (11) A minimum of 100,000 Shares for the Fund 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. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be initially and continuously listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Exchange

³² 17 CFR 240.10A-3.

Act³³ and Section 11A(a)(1)(C)(iii) of the Exchange Act³⁴ 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,³⁵ that the proposed rule change (SR-NYSEArca-2015-42), as modified by Amendments No. 1 and No. 2 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Robert W. Errett
Deputy Secretary

³³ 15 U.S.C. 78f(b)(5).

³⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

³⁵ 15 U.S.C. 78s(b)(2).

³⁶ 17 CFR 200.30-3(a)(12).