

Required fields are shown with yellow backgrounds and asterisks.

Filing by NASDAQ Stock Market
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			Rule		
Pilot	Extension of Time Period for Commission Action *	Date Expires *	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>
	Section 3C(b)(2) *
	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A proposed rule change to amend certain fees in Nasdaq Rule 5940 in connection with listing a type of open-end management investment company.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name *	Jonathan	Last Name *	Cayne
Title *	Senior Associate General Counsel		
E-mail *	jonathan.cayne@nasdaq.com		
Telephone *	(301) 978-8493	Fax	(301) 978-8472

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date	02/11/2016	Executive Vice President and General Counsel
By	Edward S. Knight	<div style="border: 1px solid black; width: 100%; height: 20px;"></div>
	(Name *)	

edward.knight@nasdaq.com

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend certain fees in Nasdaq Rule 5940 in connection with listing a type of open-end management investment company registered under the Investment Company Act of 1940, as amended (“1940 Act”), called an exchange-traded managed fund (“NextShares”). The shares are collectively referred to herein as “NextShares.”

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of Nasdaq pursuant to authority delegated by the Board of Directors of Nasdaq on July 1, 2015. Nasdaq staff will advise the Board of Directors of Nasdaq of any action taken pursuant to delegated authority. No other action by Nasdaq is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Jonathan F. Cayne
Senior Associate General Counsel
Nasdaq, Inc.
(301) 978-8493

¹ 15 U.S.C. § 78s(b)(1).

² 17 C.F.R. § 240.19b-4.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The Exchange proposes to amend certain fees in Nasdaq Rule 5940 (entitled "Exchange Traded Products") associated with the listing of NextShares.³ At the time of the Commission's approval of Nasdaq Rule 5745, Nasdaq did not specify fees applicable to NextShares. The Exchange now proposes to amend Nasdaq Rule 5940 to adopt both the entry fees and annual fees for NextShares.

Specifically, the proposed entry fee for when a company submits an application for listing a series⁴ of NextShares under Nasdaq Rule 5745 will be \$20,000 for the first series of NextShares (which will include a \$1,000 non-refundable application fee) and an additional entry fee of \$7,500 for each subsequent series of NextShares (which will include a \$1,000 non-refundable application fee).

The proposed annual fee for the issuer of a series of NextShares will be paid for each individual series of NextShares and calculated on total shares outstanding for that specific series of NextShares. The annual fee, which can vary from year to year based on the NextShares' total shares outstanding, will be \$6,500 for a series of NextShares with

³ The Commission approved Nasdaq Rule 5745 in Securities Exchange Act Release No. 34-73562 (Nov. 7, 2014), 79 FR 68309 (Nov. 14, 2014) (SR-NASDAQ-2014-020).

⁴ A series refers to each individual NextShares. For example, assume an issuer launches four NextShares (e.g., a Large Cap NextShares, a Large Cap Value NextShares, a Large Cap Growth NextShares and a Small Cap NextShares). Under Nasdaq Rule 5940(a)(2) as it is proposed to be amended, the issuer would pay a one-time initial listing fee of \$20,000 for the Large Cap NextShares since it is the first series listed, and pay a separate \$7,500 initial listing fee for each of the Large Cap Value NextShares, Large Cap Growth NextShares and Small Cap NextShares since they each would be considered a subsequent series of NextShares.

up to 25 million shares; \$15,000 for over 25 million to 100 million shares; and \$25,000 for over 100 million shares.

The Exchange intends to treat each series of NextShares independently and in connection with the calculation of the proposed annual fee, the Exchange will not aggregate the total shares outstanding across different series⁵ from the same issuer or sponsor.

NextShares will have a distinct fee schedule for both entry and annual fees because the costs Nasdaq incurs in support of NextShares is greater than the costs the Exchange incurs with other exchange-traded products (“ETPs”). The increased Nasdaq costs for NextShares, as compared with other ETPs, that the higher entry fees are intended to address, include the technological changes and the platform needed to support the initial listing, launch, and trading of NextShares. The Exchange also anticipates greater costs associated with the necessary regulatory review and extra legal work associated with the launch of each NextShares, which may include the preparation of filings under Section 19(b) of the Exchange Act and initial work with each NextShares licensee.

The increased Nasdaq costs for NextShares, as compared with other ETPs, that the higher annual fees are intended to address, include the ongoing trading and continued support of NextShares by the Exchange. This will require Nasdaq to expend greater resources than it currently expends on other ETPs. Specifically, the Exchange believes that as a result of supporting intra-day NAV-based trading, NextShares’ will require additional daily support that is more than what is currently provided for traditional ETPs.

⁵ Id.

Each series of NextShares has a different investment strategy and strikes a unique net asset value (“NAV”) at the end of each trading day and will require the calculation of a final exchange trading price each day after the NAV is calculated. This involves supplementary operational procedures that are specific to NextShares (e.g., generating two daily trade confirmations, converting intra-day proxy price⁶ share trades that are recorded and stored intra-day by Nasdaq to the NextShares’ end-of-day NAV, and the determination of final trade pricing). Nasdaq also anticipates an increase in time, effort and expense in responding to trading and data inquiries from third party vendors/counterparties, as compared with what it expends on other ETPs. The Exchange also anticipates greater costs associated with the necessary regulatory review and extra legal work associated with the ongoing support of each NextShares.

b. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and with Sections 6(b)(4) and (5) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the addition of an initial entry fee and an annual fee in connection with each series of NextShares under proposed Nasdaq Rule 5940 is

⁶ A NextShares next-determined NAV will be represented at the beginning of each trading day by a proxy price of 100.00.

⁷ 15 U.S.C. § 78f.

⁸ 15 U.S.C. § 78f(b)(4) and (5).

consistent with Section 6(b)(4) of the Act⁹ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the Exchange operates or controls.

Specifically, Nasdaq believes that although the proposed entry fee of \$20,000 for the first series¹⁰ of NextShares (which includes a \$1,000 non-refundable application fee) and the additional entry fees of \$7,500 for each subsequent series of NextShares (which includes a \$1,000 non-refundable application fee) are higher than the entry fee of \$5,000 (which includes a \$1,000 non-refundable application fee) for other ETPs, the proposed entry fees for NextShares are reasonable because they will help offset the higher costs Nasdaq incurs in support of NextShares as compared with the costs it incurs for other ETPs. These higher costs include the technological changes and the platform needed to support the initial listing, launch, and trading of NextShares, as well as the greater costs that the Exchange anticipates that will be associated with the necessary regulatory review and extra legal work associated with the launch of each NextShares, which may include the preparation of SEC filings and initial work with each NextShares licensee.

The Exchange also believes that the proposed entry fees are equitable and not unfairly discriminatory because the Exchange assesses the same entry fees uniformly and for all series of NextShares. Additionally, Nasdaq believes that although the proposed entry fees are higher than those for other ETPs for the reasons explained above, they are equitable and not unfairly discriminatory.

⁹ 15 U.S.C. § 78f(b)(4).

¹⁰ See footnote 4 above.

Nasdaq also believes that the proposed annual fee for the issuer of a series of NextShares that will be paid for each individual series and calculated on total shares outstanding for that specific NextShares is reasonable because it will help offset the higher ongoing costs, including regulatory, legal, surveillance, and operational costs to monitor the listing of NextShares and that these costs are greater than what is currently provided for other ETPs.

These costs include the ongoing trading and continued support of NextShares by the Exchange and will require Nasdaq to expend greater resources than it currently expends on other ETPs. Specifically, the Exchange believes that as a result of supporting intra-day NAV-based trading, NextShares' will require additional daily support that is more than what is currently provided for traditional ETPs. Additionally, each series of NextShares has a different investment strategy and strikes a unique NAV at the end of each trading day and will require the calculation of a final exchange trading price each day after the NAV is calculated. This involves supplementary operational procedures that are specific to NextShares (e.g., generating two daily trade confirmations, converting intra-day proxy price¹¹ share trades that are recorded and stored intra-day by Nasdaq to the NextShares' end-of-day NAV and the determination of final trade pricing).

Nasdaq also anticipates an increase in time, effort and expense in responding to trading and data inquiries from third party vendors/counterparties, as compared with what it expends on other ETPs. The Exchange also anticipates greater costs associated with the necessary regulatory review and extra legal work associated with the ongoing support of each NextShares.

¹¹ A NextShares next-determined NAV will be represented at the beginning of each trading day by a proxy price of 100.00.

The Exchange will not aggregate the total shares outstanding across different series of NextShares for purposes of the proposed annual fee. This differs with the methodology used to calculate the total shares outstanding for other ETPs, including Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares, or other security listed under the Rule 5700 Series where no other fee schedule is specifically applicable listed on The Nasdaq Global Market. The Exchange believes that although the proposed annual fees are higher for NextShares than for other ETPs, for the reasons discussed above, these fees are equitable and not unfairly discriminatory.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Sections 6(b)(4) and 6(b)(5) of the Act.¹²

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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. The Exchange believes that the proposed fees for this new exchange-traded product will promote competition to the benefit of the markets and investors by making NextShares available to investors at a reasonable cost across a broad range of actively managed investment strategies in a structure that offers the cost and tax efficiencies and shareholder protections of exchange-traded funds. In order to remain competitive with other exchanges that also develop and market new ETPs, Nasdaq scrutinizes its fees closely before adopting such entry and annual fees.

5. 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.

¹² 15 U.S.C. § 78f(b)(4) and (5).

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹³ Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

¹³ 15 U.S.C. § 78s(b)(3)(A)(ii).

11. Exhibits

1. Form of Notice of the Proposed Rule Change for the Federal Register.
5. Text of Proposed Rule Change

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASDAQ-2016-025)

February __, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Nasdaq Rule 5940

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 February 11, 2016, The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 is proposing to amend certain fees in Nasdaq Rule 5940 in connection with listing a type of open-end management investment company registered under the Investment Company Act of 1940, as amended (“1940 Act”), called an exchange-traded managed fund (“NextShares”). The shares are collectively referred to herein as “NextShares.”

The text of the proposed rule change is available at nasdaq.cchwallstreet.com at Nasdaq principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. § 78s(b)(1).

² 17 C.F.R. § 240.19b-4.

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 and discussed any comments it received on the proposed rule change. The text of those 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 Exchange proposes to amend certain fees in Nasdaq Rule 5940 (entitled "Exchange Traded Products") associated with the listing of NextShares.³ At the time of the Commission's approval of Nasdaq Rule 5745, Nasdaq did not specify fees applicable to NextShares. The Exchange now proposes to amend Nasdaq Rule 5940 to adopt both the entry fees and annual fees for NextShares.

Specifically, the proposed entry fee for when a company submits an application for listing a series⁴ of NextShares under Nasdaq Rule 5745 will be \$20,000 for the first

³ The Commission approved Nasdaq Rule 5745 in Securities Exchange Act Release No. 34-73562 (Nov. 7, 2014), 79 FR 68309 (Nov. 14, 2014) (SR-NASDAQ-2014-020).

⁴ A series refers to each individual NextShares. For example, assume an issuer launches four NextShares (e.g., a Large Cap NextShares, a Large Cap Value NextShares, a Large Cap Growth NextShares and a Small Cap NextShares). Under Nasdaq Rule 5940(a)(2) as it is proposed to be amended, the issuer would pay a one-time initial listing fee of \$20,000 for the Large Cap NextShares since it is the first series listed, and pay a separate \$7,500 initial listing fee for each of the Large Cap Value NextShares, Large Cap Growth NextShares and Small Cap NextShares since they each would be considered a subsequent series of NextShares.

series of NextShares (which will include a \$1,000 non-refundable application fee) and an additional entry fee of \$7,500 for each subsequent series of NextShares (which will include a \$1,000 non-refundable application fee).

The proposed annual fee for the issuer of a series of NextShares will be paid for each individual series of NextShares and calculated on total shares outstanding for that specific series of NextShares. The annual fee, which can vary from year to year based on the NextShares' total shares outstanding, will be \$6,500 for a series of NextShares with up to 25 million shares; \$15,000 for over 25 million to 100 million shares; and \$25,000 for over 100 million shares.

The Exchange intends to treat each series of NextShares independently and in connection with the calculation of the proposed annual fee, the Exchange will not aggregate the total shares outstanding across different series⁵ from the same issuer or sponsor.

NextShares will have a distinct fee schedule for both entry and annual fees because the costs Nasdaq incurs in support of NextShares is greater than the costs the Exchange incurs with other exchange-traded products ("ETPs"). The increased Nasdaq costs for NextShares, as compared with other ETPs, that the higher entry fees are intended to address, include the technological changes and the platform needed to support the initial listing, launch, and trading of NextShares. The Exchange also anticipates greater costs associated with the necessary regulatory review and extra legal work associated with the launch of each NextShares, which may include the preparation of

⁵ Id.

filings under Section 19(b) of the Exchange Act and initial work with each NextShares licensee.

The increased Nasdaq costs for NextShares, as compared with other ETPs, that the higher annual fees are intended to address, include the ongoing trading and continued support of NextShares by the Exchange. This will require Nasdaq to expend greater resources than it currently expends on other ETPs. Specifically, the Exchange believes that as a result of supporting intra-day NAV-based trading, NextShares' will require additional daily support that is more than what is currently provided for traditional ETPs.

Each series of NextShares has a different investment strategy and strikes a unique net asset value ("NAV") at the end of each trading day and will require the calculation of a final exchange trading price each day after the NAV is calculated. This involves supplementary operational procedures that are specific to NextShares (e.g., generating two daily trade confirmations, converting intra-day proxy price⁶ share trades that are recorded and stored intra-day by Nasdaq to the NextShares' end-of-day NAV, and the determination of final trade pricing). Nasdaq also anticipates an increase in time, effort and expense in responding to trading and data inquiries from third party vendors/counterparties, as compared with what it expends on other ETPs. The Exchange also anticipates greater costs associated with the necessary regulatory review and extra legal work associated with the ongoing support of each NextShares.

⁶ A NextShares next-determined NAV will be represented at the beginning of each trading day by a proxy price of 100.00.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and with Sections 6(b)(4) and (5) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the addition of an initial entry fee and an annual fee in connection with each series of NextShares under proposed Nasdaq Rule 5940 is consistent with Section 6(b)(4) of the Act⁹ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the Exchange operates or controls.

Specifically, Nasdaq believes that although the proposed entry fee of \$20,000 for the first series¹⁰ of NextShares (which includes a \$1,000 non-refundable application fee) and the additional entry fees of \$7,500 for each subsequent series of NextShares (which includes a \$1,000 non-refundable application fee) are higher than the entry fee of \$5,000 (which includes a \$1,000 non-refundable application fee) for other ETPs, the proposed entry fees for NextShares are reasonable because they will help offset the higher costs Nasdaq incurs in support of NextShares as compared with the costs it incurs for other ETPs. These higher costs include the technological changes and the platform needed to

⁷ 15 U.S.C. § 78f.

⁸ 15 U.S.C. § 78f(b)(4) and (5).

⁹ 15 U.S.C. § 78f(b)(4).

¹⁰ See footnote 4 above.

support the initial listing, launch, and trading of NextShares, as well as the greater costs that the Exchange anticipates that will be associated with the necessary regulatory review and extra legal work associated with the launch of each NextShares, which may include the preparation of SEC filings and initial work with each NextShares licensee.

The Exchange also believes that the proposed entry fees are equitable and not unfairly discriminatory because the Exchange assesses the same entry fees uniformly and for all series of NextShares. Additionally, Nasdaq believes that although the proposed entry fees are higher than those for other ETPs for the reasons explained above, they are equitable and not unfairly discriminatory.

Nasdaq also believes that the proposed annual fee for the issuer of a series of NextShares that will be paid for each individual series and calculated on total shares outstanding for that specific NextShares is reasonable because it will help offset the higher ongoing costs, including regulatory, legal, surveillance, and operational costs to monitor the listing of NextShares and that these costs are greater than what is currently provided for other ETPs.

These costs include the ongoing trading and continued support of NextShares by the Exchange and will require Nasdaq to expend greater resources than it currently expends on other ETPs. Specifically, the Exchange believes that as a result of supporting intra-day NAV-based trading, NextShares' will require additional daily support that is more than what is currently provided for traditional ETPs. Additionally, each series of NextShares has a different investment strategy and strikes a unique NAV at the end of each trading day and will require the calculation of a final exchange trading price each day after the NAV is calculated. This involves supplementary operational procedures

that are specific to NextShares (e.g., generating two daily trade confirmations, converting intra-day proxy price¹¹ share trades that are recorded and stored intra-day by Nasdaq to the NextShares' end-of-day NAV and the determination of final trade pricing).

Nasdaq also anticipates an increase in time, effort and expense in responding to trading and data inquiries from third party vendors/counterparties, as compared with what it expends on other ETPs. The Exchange also anticipates greater costs associated with the necessary regulatory review and extra legal work associated with the ongoing support of each NextShares.

The Exchange will not aggregate the total shares outstanding across different series of NextShares for purposes of the proposed annual fee. This differs with the methodology used to calculate the total shares outstanding for other ETPs, including Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares, or other security listed under the Rule 5700 Series where no other fee schedule is specifically applicable listed on The Nasdaq Global Market. The Exchange believes that although the proposed annual fees are higher for NextShares than for other ETPs, for the reasons discussed above, these fees are equitable and not unfairly discriminatory.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Sections 6(b)(4) and 6(b)(5) of the Act.¹²

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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

¹¹ A NextShares next-determined NAV will be represented at the beginning of each trading day by a proxy price of 100.00.

¹² 15 U.S.C. § 78f(b)(4) and (5).

of the Act. The Exchange believes that the proposed fees for this new exchange-traded product will promote competition to the benefit of the markets and investors by making NextShares available to investors at a reasonable cost across a broad range of actively managed investment strategies in a structure that offers the cost and tax efficiencies and shareholder protections of exchange-traded funds. In order to remain competitive with other exchanges that also develop and market new ETPs, Nasdaq scrutinizes its fees closely before adopting such entry and annual fees.

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

The foregoing change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹³. 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

¹³ 15 U.S.C. § 78s(b)(3)(A)(ii).

(<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2016-025 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-NASDAQ-2016-025. This file number should be included on the subject line if e-mail 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 website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-NASDAQ-2016-025, 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.¹⁴

Robert W. Errett
Deputy Secretary

¹⁴ 17 C.F.R § 200.30-3(a)(12).

EXHIBIT 5

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

The NASDAQ Stock Market Rules

5940. Exchange Traded Products

The fees in this Rule 5940 shall apply to securities listed under the Rule 5700 Series where no other fee schedule is specifically applicable. These securities include, but are not limited to, Portfolio Depository Receipts, Index Fund Shares, [and] Managed Fund Shares, and NextShares.

(a) Entry Fee

(1) When a Company submits an application for listing a series of Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares or other security listed under the Rule 5700 Series where no other fee schedule is specifically applicable on the Nasdaq Global Market, it shall pay to Nasdaq a listing fee of \$5,000 (which shall include a \$1,000 non-refundable application fee).

(2) When a Company submits an application for listing a series of NextShares under Rule 5745, it shall pay to Nasdaq an initial listing fee of \$20,000 for the first series of NextShares (which shall include a \$1,000 non-refundable application fee) and an additional listing fee of \$7,500 for each subsequent series of NextShares of the Company (which shall include a \$1,000 non-refundable application fee).

~~(2)~~ The Nasdaq Board of Directors or its designee may, in its discretion, defer or waive all or any part of the entry fee prescribed herein.

~~(3)~~ If the application is withdrawn or is not approved, the entry fee (less the non-refundable application fee) shall be refunded.

~~(4)~~ The fees described in this Rule 5940(a) shall not be applicable with respect to any securities that:

(i) – (iii) No Change

(b) Annual Fee

(1) No change.

(2) The issuer of a series of NextShares shall pay to Nasdaq for each series of NextShares an annual fee calculated on total shares outstanding of that series of NextShares according to the following schedule:

Up to 25 million shares \$6,500

Over 25 million to 100 million shares \$15,000

Over 100 million shares \$25,000

([2]3) Total shares outstanding means the aggregate number of shares in all series of Portfolio Depository Receipts or Index Fund Shares issued by the Company to be listed on The Nasdaq Global Market as shown in the Company's most recent periodic report required to be filed with the Company's appropriate regulatory authority or in more recent information held by Nasdaq.

([3]4) The Nasdaq Board of Directors or its designee may, in its discretion, defer or waive all or any part of the annual fee prescribed herein.

(c) – (d) No change.
