

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 20	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2016 - * 026	Amendment No. (req. for Amendments *)
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Filing by NASDAQ Stock Market
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" 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) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

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

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

A proposed rule change to amend Nasdaq Rule 5745 Exchange Traded Managed Fund.

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 02/17/2016

By Edward S. Knight

Executive Vice President and General Counsel

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

Add Remove View

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 Nasdaq Rule 5745 (Exchange-Traded Managed Fund (“NextShares”)) in connection with a type of open-end management investment company registered under the Investment Company Act of 1940, as amended (“1940 Act”). The shares of a NextShares are collectively referred to herein as “Shares.”

(b) and (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of the Exchange approved the submission of this proposed rule change on December 4, 2013. No other action by the Exchange 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 Nasdaq Rule 5745 in connection with the trading of NextShares³ on Nasdaq using a new trading protocol called "NAV-Based Trading." In NAV-Based Trading, all bids, offers and execution prices would be expressed as a premium/discount (which may be zero) to a NextShares next-determined net asset value ("NAV") (e.g., NAV-\$0.01; NAV+\$0.01). A NextShares NAV would be determined each business day, normally no later than 6:45 p.m. Eastern Time. Trade executions using NAV-Based Trading would be binding at the time orders are matched on Nasdaq's facilities, with the transaction prices contingent upon the determination of the NextShares NAV at the end of the business day.

A NextShares next determined NAV would be represented by a proxy price ("Proxy Price") base value (represented as 100) and will be adjusted by the premium/discount being offered/bid by the subject transaction. For example, if a client wanted to enter a bid of NAV minus \$0.01 the proxy price would be 99.99 and if a client wanted to enter an offer of NAV plus \$0.02 the proxy price would be 100.02.

Specifically, the Exchange proposes to amend Nasdaq Rule 5745 (Exchange-Traded Managed Fund ("NextShares")) to add new subsection (h) to Nasdaq Rule 5745, which defines "Proxy Price Protection". Proxy Price Protection states that every NextShares order is subject to the Proxy Price Protection threshold of plus/minus \$1.00 and that this threshold determines both the lower and upper threshold whereby orders will

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).

be cancelled at any point if it exceeds \$101.00 or falls below \$99.00, the established thresholds. The Proxy Price Protection threshold is applied to the proxy price amount of \$100.00, which is the proxy price that reflects the NAV of a NextShares Fund.

Every NextShares order, regardless of buying or selling instructions and order type, will be subject to the Proxy Price Protection threshold of plus/minus \$1.00 and will be applied uniformly across all NextShares products. A NextShares order that is subject to the Proxy Price Protection threshold of plus/minus \$1.00 will be cancelled at any point if it exceeds or falls below the established thresholds (i.e., if the NextShares order falls below \$99.00 or exceeds \$101.00). Additionally, the Proxy Price Protection threshold of plus/minus \$1.00 will be monitored to measure its effectiveness, but it may be adjusted by the Exchange in the future if it determines based upon feedback and investor experience that a different threshold would be more effective.

Nasdaq based the Proxy Price Protection threshold of plus/minus \$1.00 on how NextShares transactions occur in relation to the NAV. Since each trade executes in Proxy Price format, only the amount of premium/discount can be determined at the time of the transaction. This premium/discount from each transaction will then be applied to the end of day NAV to calculate a final transaction price. The Proxy Price Protection threshold of plus/minus of \$1.00 is to ensure that the amount of the premium/discount does not represent a disproportionate amount of the total transaction when applied to the end of day NAV. The Proxy Price Protection threshold, however, will not be adjusted in the future to be less than \$1.00 or exceed \$3.00.

In the example below, the plus/minus \$1.00 threshold would translate into a 4% change in NAV for the Large Cap NextShares given the \$25.00 end of day NAV. This

4% change in NAV is narrower, but most closely aligns with the 5% change in NAV set forth in Nasdaq Rule 11890 for clearly erroneous transactions for products with an NAV greater than \$25.00 up to and including \$50.00,⁴ which is the expected NAV range for many NextShares.⁵

To illustrate whether a subject transaction meets the plus/minus \$1.00 Proxy Price Protection threshold, consider the following example for a Large Cap NextShares⁶ with a \$25.00 end of day NAV:

- The plus/minus \$1.00 Proxy Price Protection threshold is applied to the proxy price amount of \$100.00, which is the proxy price that reflects the NAV of a NextShares Fund
- The lower threshold will be \$99.00
- The upper threshold will be \$101.00
- Buy or Sell orders lower than \$99.00 or greater than \$101.00 will not be accepted

When applied to the end of day NAV⁷ of \$25.00, the example continues as follows:

⁴ See Nasdaq Rule 11890(a)(2)(C)(1).

⁵ The Exchange notes that the proposed Proxy Price Protection threshold of plus/minus \$1.00 is also expected to be narrower than the applicable limit up – limit down plan bands. With the introduction of a new trading process (trading in Proxy Price), the Exchange seeks to offer protections that are more narrow than limit up – limit down bands given that the trading process represents a premium or discount to the end of day NAV price.

⁶ Large Cap NextShares is used only for illustrative purposes and this example applies across all NextShares (i.e., this example applies exactly the same to any type of NextShares such as a Small Cap NextShares or a Government Obligations NextShares) and does not apply on a security by security basis.

- The minimum execution price will be \$24.00
- The maximum execution price will be \$26.00

b. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act⁸ in general and Section 6(b)(5) of the Act⁹ 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that proposed new subsection (h) to Nasdaq Rule 5745 is designed to promote just and equitable principles of trade and to protect investors in the trading of NextShares by clarifying that NextShares orders that fall outside the Proxy Price Protection threshold of plus/minus \$1.00 will be cancelled, as well as by explicitly stating that this threshold is applied to the proxy price amount of \$100.00, which is the proxy price that reflects the NAV of a NextShares Fund. The Exchange believes that that the proposed rule change to implement a Proxy Price Protection threshold is similar to existing mechanisms on other markets¹⁰ and would reduce the risk of and potentially

⁷ Nasdaq will apply the premium or discount from the transaction done in Proxy Price to the end of day NAV resulting in a final transaction price inclusive of the premium or discount.

⁸ 15 U.S.C. § 78f(b).

⁹ 15 U.S.C. § 78f(b)(5).

¹⁰ See Securities Exchange Act Release No. 74063 (Jan. 15, 2015), 80 FR 3269 (Jan. 22, 2015) (SR-NYSE-2015-01) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add a Price Protection Mechanism to Prevent the Automatic Execution of Incoming Market Orders and Marketable Limit Orders

prevent the execution of orders that are potentially erroneous from occurring on the Exchange. The proposed rule change will reduce confusion and add clarity around this issue and thereby promote just and equitable principles of trade and protect investors.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.¹¹

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

The Exchange does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the proposed rule changes would assist in the introduction of NextShares, and thereby will promote competition through innovation in the exchange-traded product marketplace.

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.

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)

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A)¹² of the Act and Rule 19b-4(f)(6) thereunder.¹³ The Exchange asserts that

Outside a Specified Parameter and Eliminate Liquidity Replenishment Points and the Gap Quote Policy).

¹¹ 15 U.S.C. § 78f(b)(4) and (5).

¹² 15 U.S.C. § 78s(b)(3)(A).

¹³ 17 C.F.R. § 240.19b-4(f)(6).

the proposed rule change does not (i) significantly affect the protection of investors or the public interest, (ii) impose any significant burden on competition, and (iii) become operative for 30 days after its filing date, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange believes that clarifying the treatment of NextShares orders through new subsection (h) to Nasdaq Rule 5745 concerning Proxy Price Protection does not significantly affect the protection of investors or the public interest because the proposed rule changes would assist in the introduction of NextShares, and thereby prove beneficial to the Exchange and its traders, investors, and market participants in general through increased clarity around the trading of NextShares. The Exchange believes the rule change qualifies for immediate effectiveness as a “non-controversial” rule change under Rule 19b-4(f)(6) of the Act.

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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests the Commission to waive the noted operative delay and believes that good reason exists for such waiver and that it

would be consistent with the protection of investors and in the public interest. The Exchange believes that that the proposed rule change to implement a Proxy Price Protection threshold of plus/minus \$1.00 is similar to existing mechanisms on other markets and would reduce the risk of and potentially prevent the execution of orders that are potentially erroneous from occurring on the Exchange. The Exchange, therefore, concludes that waiver of the operative delay so that it can implement Proxy Price Protection threshold in time for the planned launch of the first NextShares product in late February is not only consistent with the protection of investors and the public interest, but would also benefit investors and the public interest.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

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.

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. - ; File No. SR-NASDAQ-2016-026)

February __, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Nasdaq Rule 5745

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 17, 2016, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Act, and Rule 19b-4 thereunder, Nasdaq is filing with the Commission a proposed rule change to amend Nasdaq Rule 5745 (Exchange-Traded Managed Fund (“NextShares”)) in connection with a type of open-end management investment company registered under the Investment Company Act of 1940, as amended (“1940 Act”). The shares of a NextShares are collectively referred to herein as “Shares.”

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

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, 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 aspects of such statements.

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

1. Purpose

The Exchange proposes to amend Nasdaq Rule 5745 in connection with the trading of NextShares³ on Nasdaq using a new trading protocol called "NAV-Based Trading." In NAV-Based Trading, all bids, offers and execution prices would be expressed as a premium/discount (which may be zero) to a NextShares next-determined net asset value ("NAV") (e.g., NAV-\$0.01; NAV+\$0.01). A NextShares NAV would be determined each business day, normally no later than 6:45 p.m. Eastern Time. Trade executions using NAV-Based Trading would be binding at the time orders are matched on Nasdaq's facilities, with the transaction prices contingent upon the determination of the NextShares NAV at the end of the business day.

A NextShares next determined NAV would be represented by a proxy price ("Proxy Price") base value (represented as 100) and will be adjusted by the premium/discount being offered/bid by the subject transaction. For example, if a client

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).

wanted to enter a bid of NAV minus \$0.01 the proxy price would be 99.99 and if a client wanted to enter an offer of NAV plus \$0.02 the proxy price would be 100.02.

Specifically, the Exchange proposes to amend Nasdaq Rule 5745 (Exchange-Traded Managed Fund (“NextShares”)) to add new subsection (h) to Nasdaq Rule 5745, which defines “Proxy Price Protection”. Proxy Price Protection states that every NextShares order is subject to the Proxy Price Protection threshold of plus/minus \$1.00 and that this threshold determines both the lower and upper threshold whereby orders will be cancelled at any point if it exceeds \$101.00 or falls below \$99.00, the established thresholds. The Proxy Price Protection threshold is applied to the proxy price amount of \$100.00, which is the proxy price that reflects the NAV of a NextShares Fund.

Every NextShares order, regardless of buying or selling instructions and order type, will be subject to the Proxy Price Protection threshold of plus/minus \$1.00 and will be applied uniformly across all NextShares products. A NextShares order that is subject to the Proxy Price Protection threshold of plus/minus \$1.00 will be cancelled at any point if it exceeds or falls below the established thresholds (i.e., if the NextShares order falls below \$99.00 or exceeds \$101.00). Additionally, the Proxy Price Protection threshold of plus/minus \$1.00 will be monitored to measure its effectiveness, but it may be adjusted by the Exchange in the future if it determines based upon feedback and investor experience that a different threshold would be more effective.

Nasdaq based the Proxy Price Protection threshold of plus/minus \$1.00 on how NextShares transactions occur in relation to the NAV. Since each trade executes in Proxy Price format, only the amount of premium/discount can be determined at the time of the transaction. This premium/discount from each transaction will then be applied to

the end of day NAV to calculate a final transaction price. The Proxy Price Protection threshold of plus/minus of \$1.00 is to ensure that the amount of the premium/discount does not represent a disproportionate amount of the total transaction when applied to the end of day NAV. The Proxy Price Protection threshold, however, will not be adjusted in the future to be less than \$1.00 or exceed \$3.00.

In the example below, the plus/minus \$1.00 threshold would translate into a 4% change in NAV for the Large Cap NextShares given the \$25.00 end of day NAV. This 4% change in NAV is narrower, but most closely aligns with the 5% change in NAV set forth in Nasdaq Rule 11890 for clearly erroneous transactions for products with an NAV greater than \$25.00 up to and including \$50.00,⁴ which is the expected NAV range for many NextShares.⁵

To illustrate whether a subject transaction meets the plus/minus \$1.00 Proxy Price Protection threshold, consider the following example for a Large Cap NextShares⁶ with a \$25.00 end of day NAV:

- The plus/minus \$1.00 Proxy Price Protection threshold is applied to the proxy price amount of \$100.00, which is the proxy price that reflects the NAV of a

⁴ See Nasdaq Rule 11890(a)(2)(C)(1).

⁵ The Exchange notes that the proposed Proxy Price Protection threshold of plus/minus \$1.00 is also expected to be narrower than the applicable limit up – limit down plan bands. With the introduction of a new trading process (trading in Proxy Price), the Exchange seeks to offer protections that are more narrow than limit up – limit down bands given that the trading process represents a premium or discount to the end of day NAV price.

⁶ Large Cap NextShares is used only for illustrative purposes and this example applies across all NextShares (i.e., this example applies exactly the same to any type of NextShares such as a Small Cap NextShares or a Government Obligations NextShares) and does not apply on a security by security basis.

NextShares Fund

- The lower threshold will be \$99.00
- The upper threshold will be \$101.00
- Buy or Sell orders lower than \$99.00 or greater than \$101.00 will not be accepted

When applied to the end of day NAV⁷ of \$25.00, the example continues as

follows:

- The minimum execution price will be \$24.00
- The maximum execution price will be \$26.00

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act⁸ in general and Section 6(b)(5) of the Act⁹ 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that proposed new subsection (h) to Nasdaq Rule 5745 is designed to promote just and equitable principles of trade and to protect investors in the trading of NextShares by clarifying that NextShares orders that fall outside the Proxy Price Protection threshold of plus/minus \$1.00 will be cancelled, as well as by explicitly

⁷ Nasdaq will apply the premium or discount from the transaction done in Proxy Price to the end of day NAV resulting in a final transaction price inclusive of the premium or discount.

⁸ 15 U.S.C. § 78f(b).

⁹ 15 U.S.C. § 78f(b)(5).

stating that this threshold is applied to the proxy price amount of \$100.00, which is the proxy price that reflects the NAV of a NextShares Fund. The Exchange believes that that the proposed rule change to implement a Proxy Price Protection threshold is similar to existing mechanisms on other markets¹⁰ and would reduce the risk of and potentially prevent the execution of orders that are potentially erroneous from occurring on the Exchange. The proposed rule change will reduce confusion and add clarity around this issue and thereby promote just and equitable principles of trade and protect investors.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.¹¹

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

The Exchange does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the proposed rule changes would assist in the introduction of NextShares, and thereby will promote competition through innovation in the exchange-traded product marketplace.

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.

¹⁰ See Securities Exchange Act Release No. 74063 (Jan. 15, 2015), 80 FR 3269 (Jan. 22, 2015) (SR-NYSE-2015-01) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add a Price Protection Mechanism to Prevent the Automatic Execution of Incoming Market Orders and Marketable Limit Orders Outside a Specified Parameter and Eliminate Liquidity Replenishment Points and the Gap Quote Policy).

¹¹ 15 U.S.C. § 78f(b)(4) and (5).

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

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A)¹² of the Act and Rule 19b-4(f)(6) thereunder.¹³ The Exchange asserts that the proposed rule change does not (i) significantly affect the protection of investors or the public interest, (ii) impose any significant burden on competition, and (iii) become operative for 30 days after its filing date, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

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.

¹² 15 U.S.C. § 78s(b)(3)(A).

¹³ 17 C.F.R. § 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. Nasdaq has satisfied this requirement.

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-NASDAQ-2016-026 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASDAQ-2016-026. 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 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 Nasdaq. 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-2016-026 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

Proposed new language is underlined; proposed deletions are in brackets.

5745. Exchange-Traded Managed Fund Shares (“NextShares”)

(a) – (g) No change.

(h) Proxy Price Protection. Every NextShares order is subject to the Proxy Price Protection threshold of plus/minus \$1.00, which determines the lower and upper threshold for the life of the order and whereby the order will be cancelled at any point if it exceeds \$101.00 or falls below \$99.00, the established thresholds. This threshold is applied to the proxy price amount of \$100.00, which is the proxy price that reflects the NAV of a NextShares Fund.
