

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 55	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2017 - * 029	Amendment No. (req. for Amendments *) 2
Filing by NASDAQ Stock Market Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input 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)(2) <input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(5) <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) * <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"/>		
<b>Description</b>				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text"/>				
<b>Contact Information</b>				
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	<input type="text"/>	
<b>Signature</b>				
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	04/13/2017		Executive Vice President and General Counsel	
By	Edward S. Knight		<input type="text"/>	
		(Name *)		
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.				
<input type="button" value="edward.knight@nasdaq.com"/>				

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, as amended (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to list and trade under Nasdaq Rule 5745 (Exchange-Traded Managed Fund Shares) the common shares (“Shares”) of the exchange-traded managed funds described herein (each, a “Fund,” and collectively, the “Funds”).<sup>3</sup> This Amendment No. 2 supersedes the original filing in its entirety.<sup>4</sup>

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1.

(b) Not applicable.

(c) Not applicable.

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

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

<sup>3</sup> Except for the specific Fund information set forth below, this rule filing conforms to the rule filing, as modified by amendments 1 and 2 thereto, relating to the listing and trading on Nasdaq of the shares of 18 series of the Eaton Vance ETMF Trust and the Eaton Vance ETMF Trust II, as approved by the Commission in Securities Exchange Act Release No. 75499 (Jul. 21, 2015) (SR-NASDAQ-2015-036) and to the rule filing, as modified by amendment 1 thereto, relating to the listing and trading on Nasdaq of the shares of 5 series of the Gabelli NextShares Trust, as approved by the Commission in Securities Exchange Act Release No. 79377 (Nov. 22, 2016) (SR-NASDAQ-2016-134).

<sup>4</sup> Amendment No. 1 was withdrawn on April 13, 2017.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of Nasdaq pursuant to authority delegated to it by the Board of Directors of Nasdaq on August 15, 2016. 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

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

a. Purpose

The Exchange proposes to list and trade the Shares of each Fund under Nasdaq Rule 5745, which governs the listing and trading of exchange-traded managed fund shares, as defined in Nasdaq Rule 5745(c)(1), on the Exchange.<sup>5</sup> Each Fund listed below is registered with the Commission as an open-end investment company and has filed a registration statement on Form N-1A ("Registration Statement") with the Commission (both Funds are contained in the same Registration Statement). Each Fund is a series of the Gabelli NextShares™ Trust (the "Trust") and will be advised by an investment adviser registered under the Investment Advisers Act of 1940 ("Adviser"), as described

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<sup>5</sup> 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).

below. Each Fund will be actively managed and will pursue various principal investment strategies, as noted below.<sup>6</sup>

Gabelli NextShares™ Trust

The Trust is registered with the Commission as an open-end investment company and has filed a Registration Statement with the Commission.<sup>7</sup> Each of the following Funds is a series of the Trust.<sup>8</sup>

Gabelli Funds, LLC will be the Adviser to the Funds. The Adviser is not a registered broker-dealer, although it is affiliated with a broker-dealer. Gabelli Funds, LLC will also act as administrator to the Funds. The Adviser has implemented and will maintain a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition of and/or changes to each Fund's portfolio.<sup>9</sup> In

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<sup>6</sup> Additional information regarding the Funds will be available on one of two free public websites ([www.gabelli.com](http://www.gabelli.com) or [www.nextshares.com](http://www.nextshares.com), as indicated more fully below), as well as in the Registration Statement for the Funds.

<sup>7</sup> See Registration Statement on Form N-1A for the Trust dated March 14, 2017 (File Nos. 333-211881 and 811-23160). The descriptions of the Funds and the Shares contained herein conform to the Registration Statement.

<sup>8</sup> The Commission has issued an order granting the Trust and certain affiliates exemptive relief under the Investment Company Act. See Investment Company Act Release No. 31608 (May 19, 2015) (File No. 812-14438).

<sup>9</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and

addition, personnel who make decisions on each Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio.

In the event that (a) the Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or a sub-adviser to a Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition of and/or changes to the relevant Fund's portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. G.distributors, LLC, will be the principal underwriter and distributor of the Funds' Shares. The Bank of New York Mellon will act as custodian and transfer agent. BNY Mellon Investment Servicing (US) Inc. will act as the sub-administrator to the Funds. Interactive Data Pricing and Reference Data, Inc. will be the IIV calculator to the Funds.

Each Fund will be actively managed and will pursue the various principal investment strategies described below.<sup>10</sup>

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procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>10</sup> See footnote 6.

1. Gabelli Small Cap Growth NextShares™ (the “Gabelli Small Cap Growth Fund”)

The Gabelli Small Cap Growth Fund seeks to provide a high level of capital appreciation. Under normal market conditions, the Gabelli Small Cap Growth Fund invests at least 80% of its net assets, plus borrowings for investment purposes, in equity securities of companies that are considered to be small companies at the time the Gabelli Small Cap Growth Fund makes its investment. The Gabelli Small Cap Growth Fund invests primarily in the common stocks of companies, which the Adviser believes are likely to have rapid growth in revenues and above average rates of earnings growth. The Adviser currently characterizes small companies for the Gabelli Small Cap Growth Fund as those with total common stock market values of \$3 billion or less at the time of investment.

2. Gabelli RBI NextShares™ (the “Gabelli RBI Fund”)

The Gabelli RBI Fund seeks to provide above average capital appreciation. Under normal market conditions, the Gabelli RBI Fund invests in equity securities, such as common stock, of domestic and foreign services and equipment companies focused on physical asset development, including roads, bridges, and infrastructure (RBI). The Adviser selects companies which it believes are currently undervalued and have the potential to benefit from domestic and global reinvestment and development of physical assets, including roads, bridges, and other infrastructure-related industries.

### Creations and Redemptions of Shares

Shares will be issued and redeemed on a daily basis for each Fund at the next-determined net asset value (“NAV”)<sup>11</sup> in specified blocks of Shares called “Creation Units.” A Creation Unit will consist of at least 25,000 Shares. Creation Units may be purchased and redeemed by or through “Authorized Participants.”<sup>12</sup> Purchases and sales of Shares in amounts less than a Creation Unit may be effected only in the secondary market, as described below, and not directly with a Fund.

The creation and redemption process for Funds may be effected “in kind,” in cash, or in a combination of securities and cash. Creation “in kind” means that an Authorized Participant—usually a brokerage house or large institutional investor—purchases the Creation Unit with a basket of securities equal in value to the aggregate NAV of the Shares in the Creation Unit. When an Authorized Participant redeems a Creation Unit in

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<sup>11</sup> As with other registered open-end investment companies, NAV generally will be calculated daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, normally 4:00 p.m. Eastern Time (“E.T.”). NAV will be calculated by dividing a Fund’s net asset value by the number of Shares outstanding. Information regarding the valuation of investments in calculating a Fund’s NAV will be contained in the Registration Statement for its Shares.

<sup>12</sup> “Authorized Participants” will be either: (1) “participating parties,” i.e., brokers or other participants in the Continuous Net Settlement System (“CNS System”) of the National Securities Clearing Corporation (“NSCC”), a clearing agency registered with the Commission and affiliated with the Depository Trust Company (“DTC”), or (2) DTC participants, which in either case have executed participant agreements with the Funds’ distributor and transfer agent regarding the creation and redemption of Creation Units. Investors will not have to be Authorized Participants in order to transact in Creation Units, but must place an order through and make appropriate arrangements with an Authorized Participant for such transactions.



kind, it receives a basket of securities equal in value to the aggregate NAV of the Shares in the Creation Unit.<sup>13</sup>

#### Composition File

As defined in Nasdaq Rule 5745(c)(3), the Composition File is the specified portfolio of securities and/or cash that a Fund will accept as a deposit in issuing a Creation Unit of Shares, and the specified portfolio of securities and/or cash that a Fund will deliver in a redemption of a Creation Unit of Shares. The Composition File will be disseminated through the NSCC once each business day before the open of trading in Shares on such day and also will be made available to the public each day on a free website.<sup>14</sup> Because the Funds seek to preserve the confidentiality of their current portfolio trading program, a Fund's Composition File generally will not be a pro rata reflection of the Fund's investment positions. Each security included in the Composition File will be a current holding of a Fund, but the Composition File generally will not include all of the securities in the Fund's portfolio or match the weightings of the included securities in the portfolio. Securities that the Adviser is in the process of acquiring for a Fund generally will not be represented in the Fund's Composition File until their purchase has been completed. Similarly, securities that are held in a Fund's portfolio but in the process of being sold may not be removed from its Composition File

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<sup>13</sup> In compliance with Nasdaq Rule 5745(b)(5), which applies to Shares based on an international or global portfolio, the Trust's application for exemptive relief under the Investment Company Act states that the Funds will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933, as amended (15 U.S.C. 77a).

<sup>14</sup> The free website containing the Composition File will be [www.nextshares.com](http://www.nextshares.com).

until the sale program is substantially completed. Funds creating and redeeming Shares in kind will use cash amounts to supplement the in-kind transactions to the extent necessary to ensure that Creation Units are purchased and redeemed at NAV. The Composition File also may consist entirely of cash, in which case it will not include any of the securities in a Fund's portfolio.<sup>15</sup>

#### Transaction Fees

All persons purchasing or redeeming Creation Units of a Fund are expected to incur a transaction fee to cover the estimated cost to that Fund of processing the transaction, including the costs of clearance and settlement charged to it by NSCC or DTC, and the estimated trading costs (i.e., brokerage commissions, bid-ask spread, and market impact) to be incurred in converting the Composition File to or from the desired portfolio holdings. The transaction fee is determined daily and will be limited to amounts determined by the Adviser to be appropriate to defray the expenses that a Fund incurs in connection with the purchase or redemption of Creation Units.

The purpose of transaction fees is to protect a Fund's existing shareholders from the dilutive costs associated with the purchase and redemption of Creation Units. Transaction fees will differ among Funds and may vary over time for a given Fund depending on the estimated trading costs for its portfolio positions and Composition File, processing costs and other considerations. Funds that specify greater amounts of cash in

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<sup>15</sup> In determining whether a Fund will issue or redeem Creation Units entirely on a cash basis, the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution for a Fund than Authorized Participants because of the Adviser's size, experience and potentially stronger relationships in the fixed-income markets.

their Composition File may impose higher transaction fees.

In addition, Funds that include in their Composition File instruments that clear through DTC may impose higher transaction fees than Funds with a Composition File consisting solely of instruments that clear through NSCC, because DTC may charge more than NSCC in connection with Creation Unit transactions.<sup>16</sup> The transaction fees applicable to each Fund's purchases and redemptions on a given business day will be disseminated through the NSCC prior to the open of market trading on that day and also will be made available to the public each day on a free website.<sup>17</sup> In all cases, the transaction fees will be limited in accordance with the requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

#### NAV-Based Trading

Because Shares will be listed and traded on the Exchange, Shares will be available for purchase and sale on an intraday basis. Shares will be purchased and sold in the secondary market at prices directly linked to a Fund's next-determined NAV using a new trading protocol called "NAV-Based Trading."<sup>18</sup> All bids, offers, and execution

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<sup>16</sup> Authorized Participants that participate in the CNS System of the NSCC are expected to be able to use the enhanced NSCC/CNS process for effecting in-kind purchases and redemptions of ETFs (the "NSCC Process") to purchase and redeem Creation Units of Funds that limit the composition of their baskets to include only NSCC Process-eligible instruments (generally domestic equity securities and cash). Because the NSCC Process is generally more efficient than the DTC clearing process, NSCC is likely to charge a Fund less than DTC to settle purchases and redemptions of Creation Units.

<sup>17</sup> The free website will be [www.nextshares.com](http://www.nextshares.com).

<sup>18</sup> Aspects of NAV-Based Trading are protected intellectual property subject to issued and pending U.S. patents held by NextShares Solutions LLC ("NextShares

prices of Shares will be expressed as a premium/discount (which may be zero) to a Fund's next-determined NAV (e.g., NAV-\$0.01, NAV+\$0.01). A Fund's NAV will be determined each business day, normally as of 4:00 p.m., E.T. Trade executions will be binding at the time orders are matched on Nasdaq's facilities, with the transaction prices contingent upon the determination of NAV.

#### Trading Premiums and Discounts

Bid and offer prices for Shares will be quoted throughout the day relative to NAV. The premium or discount to NAV at which Share prices are quoted and transactions are executed will vary depending on market factors, including the balance of supply and demand for Shares among investors, transaction fees, and other costs in connection with creating and redeeming Creation Units of Shares, the cost and availability of borrowing Shares, competition among market makers, the Share inventory positions and inventory strategies of market makers, the profitability requirements and business objectives of market makers, and the volume of Share trading. Reflecting such market factors, prices for Shares in the secondary market may be above, at or below NAV. Funds with higher transaction fees may trade at wider premiums or discounts to NAV than other Funds with lower transaction fees, reflecting the added costs to market makers of managing their Share inventory positions through purchases and redemptions of Creation Units.

Because making markets in Shares will be simple to manage and low risk, competition among market makers seeking to earn reliable, low-risk profits should enable

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Solutions”), a wholly owned subsidiary of Eaton Vance Corp. Nasdaq has entered into a license agreement with NextShares Solutions to allow for NAV-Based Trading on the Exchange of exchange-traded managed funds that have themselves entered into license agreements with NextShares Solutions.

the Shares to routinely trade at tight bid-ask spreads and narrow premiums/discounts to NAV. As noted below, the Funds will maintain a public website that will be updated on a daily basis to show current and historical trading spreads and premiums/discounts of Shares trading in the secondary market.<sup>19</sup>

#### Transmitting and Processing Orders

Member firms will utilize certain existing order types and interfaces to transmit Share bids and offers to Nasdaq, which will process Share trades like trades in shares of other listed securities.<sup>20</sup> In the systems used to transmit and process transactions in Shares, a Fund's next-determined NAV will be represented by a proxy price (e.g., 100.00) and a premium/discount of a stated amount to the next-determined NAV to be represented by the same increment/decrement from the proxy price used to denote NAV (e.g., NAV-\$0.01 would be represented as 99.99; NAV+\$0.01 as 100.01).

To avoid potential investor confusion, Nasdaq will work with member firms and providers of market data services to seek to ensure that representations of intraday bids, offers, and execution prices of Shares that are made available to the investing public follow the "NAV-\$0.01/NAV+\$0.01" (or similar) display format. All Shares listed on the Exchange will have a unique identifier associated with their ticker symbols, which would indicate that the Shares are traded using NAV-Based Trading. Nasdaq makes available to member firms and market data services certain proprietary data feeds that are

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<sup>19</sup> The website containing this information will be [www.gabelli.com](http://www.gabelli.com).

<sup>20</sup> As noted below, all orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day. Prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the effect of this characteristic on existing order types.

designed to supplement the market information disseminated through the consolidated tape (“Consolidated Tape”).

Specifically, the Exchange will use the NASDAQ Basic and NASDAQ Last Sale data feeds to disseminate intraday price and quote data for Shares in real time in the “NAV- $\$0.01$ /NAV+ $\$0.01$ ” (or similar) display format. Member firms could use the NASDAQ Basic and NASDAQ Last Sale data feeds to source intraday Share prices for presentation to the investing public in the “NAV- $\$0.01$ /NAV+ $\$0.01$ ” (or similar) display format.

Alternatively, member firms could source intraday Share prices in proxy price format from the Consolidated Tape and other Nasdaq data feeds (e.g., Nasdaq TotalView and Nasdaq Level 2) and use a simple algorithm to convert prices into the “NAV- $\$0.01$ /NAV+ $\$0.01$ ” (or similar) display format. As noted below, prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the identities of the specific Nasdaq data feeds from which intraday Share prices in proxy price format may be obtained.

#### Intraday Reporting of Quotes and Trades

All bids and offers for Shares and all Share trade executions will be reported intraday in real time by the Exchange to the Consolidated Tape<sup>21</sup> and separately disseminated to member firms and market data services through the Exchange data feeds

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<sup>21</sup> Due to systems limitations, the Consolidated Tape will report intraday execution prices and quotes for Shares using a proxy price format. As noted, Nasdaq will separately report real-time execution prices and quotes to member firms and providers of market data services in the “NAV- $\$0.01$ /NAV+ $\$0.01$ ” (or similar) display format, and otherwise seek to ensure that representations of intraday bids, offers and execution prices for Shares that are made available to the investing public follow the same display format.

listed above. The Exchange will also provide the member firms participating in each Share trade with a contemporaneous notice of trade execution, indicating the number of Shares bought or sold and the executed premium/discount to NAV.<sup>22</sup>

#### Final Trade Pricing, Reporting, and Settlement

All executed Share trades will be recorded and stored intraday by Nasdaq to await the calculation of such Fund's end-of-day NAV and the determination of final trade pricing. After a Fund's NAV is calculated and provided to the Exchange, Nasdaq will price each Share trade entered into during the day at the Fund's NAV plus/minus the trade's executed premium/discount. Using the final trade price, each executed Share trade will then be disseminated to member firms and market data services via an FTP file to be created for exchange-traded managed funds and confirmed to the member firms participating in the trade to supplement the previously provided information to include final pricing.<sup>23</sup> After the pricing is finalized, Nasdaq will deliver the Share trading data to NSCC for clearance and settlement, following the same processes used for the clearance and settlement of trades in other exchange-traded securities.

#### Availability of Information

Prior to the commencement of market trading in Shares, the Funds will be required to establish and maintain a public website through which its current prospectus

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<sup>22</sup> All orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day.

<sup>23</sup> File Transfer Protocol ("FTP") is a standard network protocol used to transfer computer files on the Internet. Nasdaq will arrange for the daily dissemination of an FTP file with executed Share trades to member firms and market data services.

may be downloaded.<sup>24</sup> In addition, a separate website ([www.nextshares.com](http://www.nextshares.com)) will include additional information concerning the Funds updated on a daily basis, including the prior business day's NAV, and the following trading information for such business day expressed as premiums/discounts to NAV: (a) intraday high, low, average, and closing prices of Shares in Exchange trading; (b) the midpoint of the highest bid and lowest offer prices as of the close of Exchange trading, expressed as a premium/discount to NAV (the "Closing Bid/Ask Midpoint"); and (c) the spread between highest bid and lowest offer prices as of the close of Exchange trading (the "Closing Bid/Ask Spread."). The [www.nextshares.com](http://www.nextshares.com) website will also contain charts showing the frequency distribution and range of values of trading prices, Closing Bid/Ask Midpoints, and Closing Bid/Ask Spreads over time.

The Composition File will be disseminated through the NSCC before the open of trading in Shares on each business day and also will be made available to the public each day on a free website as noted above.<sup>25</sup> Consistent with the disclosure requirements that apply to traditional open-end investment companies, a complete list of current Fund portfolio positions will be made available at least once each calendar quarter, with a reporting lag of not more than 60 days. Funds may provide more frequent disclosures of portfolio positions at their discretion.

Reports of Share transactions will be disseminated to the market and delivered to the member firms participating in the trade contemporaneous with execution. Once a Fund's daily NAV has been calculated and disseminated, Nasdaq will price each Share

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<sup>24</sup> See footnote 19.

<sup>25</sup> See footnote 14.



trade entered into during the day at the Fund's NAV plus/minus the trade's executed premium/discount. Using the final trade price, each executed Share trade will then be disseminated to member firms and market data services via an FTP file to be created for exchange-traded managed funds and confirmed to the member firms participating in the trade to supplement the previously provided information to include final pricing.

Information regarding NAV-based trading prices, best bids and offers for Shares, and volume of Shares traded will be continuously available on a real-time basis throughout each trading day on brokers' computer screens and other electronic services.

#### Initial and Continued Listing

Shares will conform to the initial and continued listing criteria as set forth under Nasdaq Rule 5745. A minimum of 50,000 Shares and no less than two Creation Units of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily (on each business day that the New York Stock Exchange is open for trading) and provided to Nasdaq via the Mutual Fund Quotation Service ("MFQS") by the fund accounting agent. As soon as the NAV is entered into MFQS, Nasdaq will disseminate the NAV to market participants and market data vendors via the Mutual Fund Dissemination Service ("MFDS") so all firms will receive the NAV per share at the same time. The Reporting Authority<sup>26</sup> also will ensure that the Composition File will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding each Fund's portfolio positions and changes in the positions.

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<sup>26</sup> See Nasdaq Rule 5745(c)(4).

For each Fund, an estimated value of an individual Share, defined in Nasdaq Rule 5745(c)(2) as the “Intraday Indicative Value,” will be calculated and disseminated at intervals of not more than 15 minutes throughout the Regular Market Session<sup>27</sup> when Shares trade on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the IIV will be calculated on an intraday basis and provided to Nasdaq for dissemination via the Nasdaq Global Index Service (“GIDS”).

The IIV will be based on current information regarding the value of the securities and other assets held by a Fund.<sup>28</sup> The purpose of the IIVs is to enable investors to estimate the next-determined NAV so they can determine the number of Shares to buy or sell if they want to transact in an approximate dollar amount (e.g., if an investor wants to acquire approximately \$5,000 of a Fund, how many Shares should the investor buy?).<sup>29</sup>

The Adviser is not a registered broker-dealer, although it is affiliated with a broker-dealer. The Adviser has implemented and will maintain a fire wall with respect to

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<sup>27</sup> See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).

<sup>28</sup> IIVs disseminated throughout each trading day would be based on the same portfolio as used to calculate that day’s NAV. Funds will reflect purchases and sales of portfolio positions in their NAV the next business day after trades are executed.

<sup>29</sup> Because, in NAV-Based Trading, prices of executed trades are not determined until the reference NAV is calculated, buyers and sellers of Shares during the trading day will not know the final value of their purchases and sales until the end of the trading day. A Fund’s Registration Statement, website and any advertising or marketing materials will include prominent disclosure of this fact. Although IIVs may provide useful estimates of the value of intraday trades, they cannot be used to calculate with precision the dollar value of the Shares to be bought or sold.

its broker-dealer affiliate regarding access to information concerning the composition of and/or changes to each Fund's portfolio. In addition, personnel who make decisions on each Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio.

In the event that (a) the Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or a sub-adviser to a Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and will maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition of and/or changes to the relevant Fund's portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

#### Trading Halts

The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in Shares. Nasdaq will halt trading in Shares under the conditions specified in Nasdaq Rule 4120 and in Nasdaq Rule 5745(d)(2)(C). Additionally, Nasdaq may cease trading Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. To manage the risk of a non-regulatory Share trading halt, Nasdaq has in place back-up processes and procedures to ensure orderly trading. Because, in NAV-Based Trading, all trade execution prices are linked to end-of-day NAV, buyers and sellers of Shares should be less exposed to risk of loss due to intraday

trading halts than buyers and sellers of conventional exchange-traded funds (“ETFs”) and other exchange-traded securities.

#### Trading Rules

Nasdaq deems Shares to be equity securities, thus rendering trading in Shares to be subject to Nasdaq’s existing rules governing the trading of equity securities. Nasdaq will allow trading in Shares from 9:30 a.m. until 4:00 p.m. E.T.

Every order to trade Shares of the Funds 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.<sup>30</sup> With certain exceptions, each order also must contain the applicable order attributes, including routing instructions and time-in-force information, as described in Nasdaq Rule 4703.<sup>31</sup>

#### Surveillance

The Exchange represents that trading in Shares will be subject to the existing trading surveillances, administered by both Nasdaq and the Financial Industry Regulatory Authority, Inc. (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>32</sup> The Exchange represents that these procedures are adequate to properly monitor trading of Shares on the

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<sup>30</sup> See Nasdaq Rule 5745(h).

<sup>31</sup> See Nasdaq Rule 5745(b)(6).

<sup>32</sup> FINRA provides surveillance of trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

Exchange and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”)<sup>33</sup> regarding trading in Shares, and in exchange-traded securities and instruments held by the Funds (to the extent such exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of a Fund’s portfolio holdings), and FINRA may obtain trading information regarding such trading from other markets and other entities.

In addition, the Exchange may obtain information regarding trading in Shares, and in exchange-traded securities and instruments held by the Funds (to the extent such exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of a Fund’s portfolio holdings), from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance

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<sup>33</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of a Fund’s portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material non-public information by its employees.

#### Information Circular

Prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and noting that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in Shares to customers; (3) how information regarding the IIV and Composition File is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing Shares prior to or concurrently with the confirmation of a transaction; and (5) information regarding NAV-Based Trading protocols.

As noted above, all orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day. The Information Circular will discuss the effect of this characteristic on existing order types. The Information Circular also will identify the specific Nasdaq data feeds from which intraday Share prices in proxy price format may be obtained.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. Members purchasing Shares from a Fund for resale to investors will deliver a summary prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules

under the Act.

The Information Circular also will reference that the Funds are subject to various fees and expenses described in the Registration Statements. The Information Circular will also disclose the trading hours of the Shares and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares will be publicly available at [www.nextshares.com](http://www.nextshares.com).

Information regarding the Funds' trading protocols will be disseminated to Nasdaq members in accordance with current processes for newly listed products. Nasdaq intends to provide its members with a detailed explanation of NAV-Based Trading through a Trading Alert issued prior to the commencement of trading in Shares on the Exchange.

#### Continued Listing Representations

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or intraday indicative values, or (d) the applicability of Exchange listing rules shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by any of the Funds to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If any of the Funds are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

b. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act,<sup>34</sup> in general, and Section 6(b)(5) of the Act,<sup>35</sup> 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 the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares would be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5745. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Shares on Nasdaq and to deter and detect violations of Exchange rules and the applicable federal securities laws. The Adviser is not registered as a broker-dealer, but it is affiliated with a broker-dealer. The Adviser has implemented and will maintain a “fire wall” between the Adviser and its broker-dealer affiliate with respect to access to information concerning the composition of and/or changes to each Fund’s portfolio holdings. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement, to the extent necessary.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Exchange will obtain a

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<sup>34</sup> 15 U.S.C. 78f(b).

<sup>35</sup> 15 U.S.C. 78f(b)(5).



representation from each issuer of Shares that the NAV per Share will be calculated on each business day that the New York Stock Exchange is open for trading and that the NAV will be made available to all market participants at the same time. In addition, a large amount of information would be publicly available regarding the Funds and the Shares, thereby promoting market transparency.

Prior to the commencement of market trading in Shares, the Funds will be required to establish and maintain a public website through which its current prospectus may be downloaded.<sup>36</sup> In addition, a separate website ([www.nextshares.com](http://www.nextshares.com)) will display additional information concerning the Funds updated on a daily basis, including the prior business day's NAV, and the following trading information for such business day expressed as premiums/discounts to NAV: (a) intraday high, low, average and closing prices of Shares in Exchange trading; (b) the Closing Bid/Ask Midpoint; and (c) the Closing Bid/Ask Spread.

The [www.nextshares.com](http://www.nextshares.com) website will also contain charts showing the frequency distribution and range of values of trading prices, Closing Bid/Ask Midpoints, and Closing Bid/Ask Spreads over time. The Composition File will be disseminated through the NSCC before the open of trading in Shares on each business day and also will be made available to the public each day on a free website, as noted above.<sup>37</sup> The Exchange will obtain a representation from the issuer of the Shares that the IIV will be calculated and disseminated on an intraday basis at intervals of not more than 15 minutes during trading on the Exchange and provided to Nasdaq for dissemination via GIDS. A

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<sup>36</sup> See footnote 19.

<sup>37</sup> See footnote 14.

complete list of current portfolio positions for the Funds will be made available at least once each calendar quarter, with a reporting lag of not more than 60 days. Funds may provide more frequent disclosures of portfolio positions at their discretion.

Transactions in Shares will be reported to the Consolidated Tape at the time of execution in proxy price format and will be disseminated to member firms and market data services through Nasdaq's trading service and market data interfaces, as defined above. Once each Fund's daily NAV has been calculated and the final price of its intraday Share trades has been determined, Nasdaq will deliver a confirmation with final pricing to the transacting parties. At the end of the day, Nasdaq will also post a newly created FTP file with the final transaction data for the trading and market data services.

The Exchange expects that information regarding NAV-based trading prices and volumes of Shares traded will be continuously available on a real-time basis throughout each trading day on brokers' computer screens and other electronic services. Because Shares will trade at prices based on the next-determined NAV, investors will be able to buy and sell individual Shares at a known premium or discount to NAV that they can limit by using limit orders at the time of order entry. Trading in Shares will be subject to Nasdaq Rules 5745(d)(2)(B) and (C), which provide for the suspension of trading or trading halts under certain circumstances, including if, in the view of the Exchange, trading in Shares becomes inadvisable.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of the Funds, which seek to provide investors with access to a broad range of actively managed investment strategies in a structure that offers the cost

and tax efficiencies and shareholder protections of ETFs, while removing the requirement for daily portfolio holdings disclosure to ensure a tight relationship between market trading prices and NAV.

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

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. In fact, the Exchange believes that the introduction of the Funds would promote competition by making available to investors a broad range of actively managed investment strategies in a structure that offers the cost and tax efficiencies and shareholder protections of ETFs, while removing the requirement for daily portfolio holdings disclosure to ensure a tight relationship between market trading prices and NAV. Moreover, the Exchange believes that the proposed method of Share trading would provide investors with transparency of trading costs, and the ability to control trading costs using limit orders, that is not available for conventionally traded ETFs.

These developments could significantly enhance competition to the benefit of the markets and investors.

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)

Not applicable.

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.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2017-029)

April \_\_, 2017

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to List and Trade Exchange-Traded Managed Funds

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 13, 2017, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the 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

The Exchange proposes to list and trade under Nasdaq Rule 5745 (Exchange-Traded Managed Fund Shares) the common shares (“Shares”) of the exchange-traded managed funds described herein (each, a “Fund,” and collectively, the “Funds”).<sup>3</sup> This Amendment No. 2 supersedes the original filing in its entirety.<sup>4</sup>

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

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

<sup>3</sup> Except for the specific Fund information set forth below, this rule filing conforms to the rule filing, as modified by amendments 1 and 2 thereto, relating to the listing and trading on Nasdaq of the shares of 18 series of the Eaton Vance ETMF Trust and the Eaton Vance ETMF Trust II, as approved by the Commission in Securities Exchange Act Release No. 75499 (Jul. 21, 2015) (SR-NASDAQ-2015-036) and to the rule filing, as modified by amendment 1 thereto, relating to the listing and trading on Nasdaq of the shares of 5 series of the Gabelli NextShares

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to list and trade the Shares of each Fund under Nasdaq Rule 5745, which governs the listing and trading of exchange-traded managed fund shares, as defined in Nasdaq Rule 5745(c)(1), on the Exchange.<sup>5</sup> Each Fund listed below is registered with the Commission as an open-end investment company and has filed a registration statement on Form N-1A ("Registration Statement") with the Commission (both Funds are contained in the same Registration Statement). Each Fund is a series of the Gabelli NextShares™ Trust (the "Trust") and will be advised by an investment

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Trust, as approved by the Commission in Securities Exchange Act Release No. 79377 (Nov. 22, 2016) (SR-NASDAQ-2016-134).

<sup>4</sup> Amendment No. 1 was withdrawn on April 13, 2017.

<sup>5</sup> 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).

adviser registered under the Investment Advisers Act of 1940 (“Adviser”), as described below. Each Fund will be actively managed and will pursue various principal investment strategies, as noted below.<sup>6</sup>

Gabelli NextShares™ Trust

The Trust is registered with the Commission as an open-end investment company and has filed a Registration Statement with the Commission.<sup>7</sup> Each of the following Funds is a series of the Trust.<sup>8</sup>

Gabelli Funds, LLC will be the Adviser to the Funds. The Adviser is not a registered broker-dealer, although it is affiliated with a broker-dealer. Gabelli Funds, LLC will also act as administrator to the Funds. The Adviser has implemented and will maintain a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition of and/or changes to each Fund’s portfolio.<sup>9</sup> In

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<sup>6</sup> Additional information regarding the Funds will be available on one of two free public websites ([www.gabelli.com](http://www.gabelli.com) or [www.nextshares.com](http://www.nextshares.com), as indicated more fully below), as well as in the Registration Statement for the Funds.

<sup>7</sup> See Registration Statement on Form N-1A for the Trust dated March 14, 2017 (File Nos. 333-211881 and 811-23160). The descriptions of the Funds and the Shares contained herein conform to the Registration Statement.

<sup>8</sup> The Commission has issued an order granting the Trust and certain affiliates exemptive relief under the Investment Company Act. See Investment Company Act Release No. 31608 (May 19, 2015) (File No. 812-14438).

<sup>9</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless

addition, personnel who make decisions on each Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio.

In the event that (a) the Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or a sub-adviser to a Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition of and/or changes to the relevant Fund's portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. G.distributors, LLC, will be the principal underwriter and distributor of the Funds' Shares. The Bank of New York Mellon will act as custodian and transfer agent. BNY Mellon Investment Servicing (US) Inc. will act as the sub-administrator to the Funds. Interactive Data Pricing and Reference Data, Inc. will be the IIV calculator to the Funds.

Each Fund will be actively managed and will pursue the various principal investment strategies described below.<sup>10</sup>

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such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>10</sup> See footnote 6.



1. Gabelli Small Cap Growth NextShares™ (the “Gabelli Small Cap Growth Fund”)

The Gabelli Small Cap Growth Fund seeks to provide a high level of capital appreciation. Under normal market conditions, the Gabelli Small Cap Growth Fund invests at least 80% of its net assets, plus borrowings for investment purposes, in equity securities of companies that are considered to be small companies at the time the Gabelli Small Cap Growth Fund makes its investment. The Gabelli Small Cap Growth Fund invests primarily in the common stocks of companies, which the Adviser believes are likely to have rapid growth in revenues and above average rates of earnings growth. The Adviser currently characterizes small companies for the Gabelli Small Cap Growth Fund as those with total common stock market values of \$3 billion or less at the time of investment.

2. Gabelli RBI NextShares™ (the “Gabelli RBI Fund”)

The Gabelli RBI Fund seeks to provide above average capital appreciation. Under normal market conditions, the Gabelli RBI Fund invests in equity securities, such as common stock, of domestic and foreign services and equipment companies focused on physical asset development, including roads, bridges, and infrastructure (RBI). The Adviser selects companies which it believes are currently undervalued and have the potential to benefit from domestic and global reinvestment and development of physical assets, including roads, bridges, and other infrastructure-related industries.

### Creations and Redemptions of Shares

Shares will be issued and redeemed on a daily basis for each Fund at the next-determined net asset value (“NAV”)<sup>11</sup> in specified blocks of Shares called “Creation Units.” A Creation Unit will consist of at least 25,000 Shares. Creation Units may be purchased and redeemed by or through “Authorized Participants.”<sup>12</sup> Purchases and sales of Shares in amounts less than a Creation Unit may be effected only in the secondary market, as described below, and not directly with a Fund.

The creation and redemption process for Funds may be effected “in kind,” in cash, or in a combination of securities and cash. Creation “in kind” means that an Authorized Participant—usually a brokerage house or large institutional investor—purchases the Creation Unit with a basket of securities equal in value to the aggregate NAV of the Shares in the Creation Unit. When an Authorized Participant redeems a Creation Unit in

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<sup>11</sup> As with other registered open-end investment companies, NAV generally will be calculated daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, normally 4:00 p.m. Eastern Time (“E.T.”). NAV will be calculated by dividing a Fund’s net asset value by the number of Shares outstanding. Information regarding the valuation of investments in calculating a Fund’s NAV will be contained in the Registration Statement for its Shares.

<sup>12</sup> “Authorized Participants” will be either: (1) “participating parties,” i.e., brokers or other participants in the Continuous Net Settlement System (“CNS System”) of the National Securities Clearing Corporation (“NSCC”), a clearing agency registered with the Commission and affiliated with the Depository Trust Company (“DTC”), or (2) DTC participants, which in either case have executed participant agreements with the Funds’ distributor and transfer agent regarding the creation and redemption of Creation Units. Investors will not have to be Authorized Participants in order to transact in Creation Units, but must place an order through and make appropriate arrangements with an Authorized Participant for such transactions.

kind, it receives a basket of securities equal in value to the aggregate NAV of the Shares in the Creation Unit.<sup>13</sup>

#### Composition File

As defined in Nasdaq Rule 5745(c)(3), the Composition File is the specified portfolio of securities and/or cash that a Fund will accept as a deposit in issuing a Creation Unit of Shares, and the specified portfolio of securities and/or cash that a Fund will deliver in a redemption of a Creation Unit of Shares. The Composition File will be disseminated through the NSCC once each business day before the open of trading in Shares on such day and also will be made available to the public each day on a free website.<sup>14</sup> Because the Funds seek to preserve the confidentiality of their current portfolio trading program, a Fund's Composition File generally will not be a pro rata reflection of the Fund's investment positions. Each security included in the Composition File will be a current holding of a Fund, but the Composition File generally will not include all of the securities in the Fund's portfolio or match the weightings of the included securities in the portfolio. Securities that the Adviser is in the process of acquiring for a Fund generally will not be represented in the Fund's Composition File until their purchase has been completed. Similarly, securities that are held in a Fund's portfolio but in the process of being sold may not be removed from its Composition File

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<sup>13</sup> In compliance with Nasdaq Rule 5745(b)(5), which applies to Shares based on an international or global portfolio, the Trust's application for exemptive relief under the Investment Company Act states that the Funds will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933, as amended (15 U.S.C. 77a).

<sup>14</sup> The free website containing the Composition File will be [www.nextshares.com](http://www.nextshares.com).

until the sale program is substantially completed. Funds creating and redeeming Shares in kind will use cash amounts to supplement the in-kind transactions to the extent necessary to ensure that Creation Units are purchased and redeemed at NAV. The Composition File also may consist entirely of cash, in which case it will not include any of the securities in a Fund's portfolio.<sup>15</sup>

#### Transaction Fees

All persons purchasing or redeeming Creation Units of a Fund are expected to incur a transaction fee to cover the estimated cost to that Fund of processing the transaction, including the costs of clearance and settlement charged to it by NSCC or DTC, and the estimated trading costs (i.e., brokerage commissions, bid-ask spread, and market impact) to be incurred in converting the Composition File to or from the desired portfolio holdings. The transaction fee is determined daily and will be limited to amounts determined by the Adviser to be appropriate to defray the expenses that a Fund incurs in connection with the purchase or redemption of Creation Units.

The purpose of transaction fees is to protect a Fund's existing shareholders from the dilutive costs associated with the purchase and redemption of Creation Units. Transaction fees will differ among Funds and may vary over time for a given Fund depending on the estimated trading costs for its portfolio positions and Composition File, processing costs and other considerations. Funds that specify greater amounts of cash in their Composition File may impose higher transaction fees.

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<sup>15</sup> In determining whether a Fund will issue or redeem Creation Units entirely on a cash basis, the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution for a Fund than Authorized Participants because of the Adviser's size, experience and potentially stronger relationships in the fixed-income markets.

In addition, Funds that include in their Composition File instruments that clear through DTC may impose higher transaction fees than Funds with a Composition File consisting solely of instruments that clear through NSCC, because DTC may charge more than NSCC in connection with Creation Unit transactions.<sup>16</sup> The transaction fees applicable to each Fund's purchases and redemptions on a given business day will be disseminated through the NSCC prior to the open of market trading on that day and also will be made available to the public each day on a free website.<sup>17</sup> In all cases, the transaction fees will be limited in accordance with the requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

#### NAV-Based Trading

Because Shares will be listed and traded on the Exchange, Shares will be available for purchase and sale on an intraday basis. Shares will be purchased and sold in the secondary market at prices directly linked to a Fund's next-determined NAV using a new trading protocol called "NAV-Based Trading."<sup>18</sup> All bids, offers, and execution

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<sup>16</sup> Authorized Participants that participate in the CNS System of the NSCC are expected to be able to use the enhanced NSCC/CNS process for effecting in-kind purchases and redemptions of ETFs (the "NSCC Process") to purchase and redeem Creation Units of Funds that limit the composition of their baskets to include only NSCC Process-eligible instruments (generally domestic equity securities and cash). Because the NSCC Process is generally more efficient than the DTC clearing process, NSCC is likely to charge a Fund less than DTC to settle purchases and redemptions of Creation Units.

<sup>17</sup> The free website will be [www.nextshares.com](http://www.nextshares.com).

<sup>18</sup> Aspects of NAV-Based Trading are protected intellectual property subject to issued and pending U.S. patents held by NextShares Solutions LLC ("NextShares Solutions"), a wholly owned subsidiary of Eaton Vance Corp. Nasdaq has entered into a license agreement with NextShares Solutions to allow for NAV-

prices of Shares will be expressed as a premium/discount (which may be zero) to a Fund's next-determined NAV (e.g., NAV-\$0.01, NAV+\$0.01). A Fund's NAV will be determined each business day, normally as of 4:00 p.m., E.T. Trade executions will be binding at the time orders are matched on Nasdaq's facilities, with the transaction prices contingent upon the determination of NAV.

#### Trading Premiums and Discounts

Bid and offer prices for Shares will be quoted throughout the day relative to NAV. The premium or discount to NAV at which Share prices are quoted and transactions are executed will vary depending on market factors, including the balance of supply and demand for Shares among investors, transaction fees, and other costs in connection with creating and redeeming Creation Units of Shares, the cost and availability of borrowing Shares, competition among market makers, the Share inventory positions and inventory strategies of market makers, the profitability requirements and business objectives of market makers, and the volume of Share trading. Reflecting such market factors, prices for Shares in the secondary market may be above, at or below NAV. Funds with higher transaction fees may trade at wider premiums or discounts to NAV than other Funds with lower transaction fees, reflecting the added costs to market makers of managing their Share inventory positions through purchases and redemptions of Creation Units.

Because making markets in Shares will be simple to manage and low risk, competition among market makers seeking to earn reliable, low-risk profits should enable the Shares to routinely trade at tight bid-ask spreads and narrow premiums/discounts to NAV. As noted below, the Funds will maintain a public website that will be updated on a

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Based Trading on the Exchange of exchange-traded managed funds that have themselves entered into license agreements with NextShares Solutions.

daily basis to show current and historical trading spreads and premiums/discounts of Shares trading in the secondary market.<sup>19</sup>

#### Transmitting and Processing Orders

Member firms will utilize certain existing order types and interfaces to transmit Share bids and offers to Nasdaq, which will process Share trades like trades in shares of other listed securities.<sup>20</sup> In the systems used to transmit and process transactions in Shares, a Fund's next-determined NAV will be represented by a proxy price (e.g., 100.00) and a premium/discount of a stated amount to the next-determined NAV to be represented by the same increment/decrement from the proxy price used to denote NAV (e.g., NAV-\$0.01 would be represented as 99.99; NAV+\$0.01 as 100.01).

To avoid potential investor confusion, Nasdaq will work with member firms and providers of market data services to seek to ensure that representations of intraday bids, offers, and execution prices of Shares that are made available to the investing public follow the "NAV-\$0.01/NAV+\$0.01" (or similar) display format. All Shares listed on the Exchange will have a unique identifier associated with their ticker symbols, which would indicate that the Shares are traded using NAV-Based Trading. Nasdaq makes available to member firms and market data services certain proprietary data feeds that are designed to supplement the market information disseminated through the consolidated tape ("Consolidated Tape").

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<sup>19</sup> The website containing this information will be [www.gabelli.com](http://www.gabelli.com).

<sup>20</sup> As noted below, all orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day. Prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the effect of this characteristic on existing order types.

Specifically, the Exchange will use the NASDAQ Basic and NASDAQ Last Sale data feeds to disseminate intraday price and quote data for Shares in real time in the “NAV-\$0.01/NAV+\$0.01” (or similar) display format. Member firms could use the NASDAQ Basic and NASDAQ Last Sale data feeds to source intraday Share prices for presentation to the investing public in the “NAV-\$0.01/NAV+\$0.01” (or similar) display format.

Alternatively, member firms could source intraday Share prices in proxy price format from the Consolidated Tape and other Nasdaq data feeds (e.g., Nasdaq TotalView and Nasdaq Level 2) and use a simple algorithm to convert prices into the “NAV-\$0.01/NAV+\$0.01” (or similar) display format. As noted below, prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the identities of the specific Nasdaq data feeds from which intraday Share prices in proxy price format may be obtained.

#### Intraday Reporting of Quotes and Trades

All bids and offers for Shares and all Share trade executions will be reported intraday in real time by the Exchange to the Consolidated Tape<sup>21</sup> and separately disseminated to member firms and market data services through the Exchange data feeds listed above. The Exchange will also provide the member firms participating in each Share trade with a contemporaneous notice of trade execution, indicating the number of

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<sup>21</sup> Due to systems limitations, the Consolidated Tape will report intraday execution prices and quotes for Shares using a proxy price format. As noted, Nasdaq will separately report real-time execution prices and quotes to member firms and providers of market data services in the “NAV-\$0.01/NAV+\$0.01” (or similar) display format, and otherwise seek to ensure that representations of intraday bids, offers and execution prices for Shares that are made available to the investing public follow the same display format.



Shares bought or sold and the executed premium/discount to NAV.<sup>22</sup>

Final Trade Pricing, Reporting, and Settlement

All executed Share trades will be recorded and stored intraday by Nasdaq to await the calculation of such Fund's end-of-day NAV and the determination of final trade pricing. After a Fund's NAV is calculated and provided to the Exchange, Nasdaq will price each Share trade entered into during the day at the Fund's NAV plus/minus the trade's executed premium/discount. Using the final trade price, each executed Share trade will then be disseminated to member firms and market data services via an FTP file to be created for exchange-traded managed funds and confirmed to the member firms participating in the trade to supplement the previously provided information to include final pricing.<sup>23</sup> After the pricing is finalized, Nasdaq will deliver the Share trading data to NSCC for clearance and settlement, following the same processes used for the clearance and settlement of trades in other exchange-traded securities.

Availability of Information

Prior to the commencement of market trading in Shares, the Funds will be required to establish and maintain a public website through which its current prospectus may be downloaded.<sup>24</sup> In addition, a separate website ([www.nextshares.com](http://www.nextshares.com)) will include additional information concerning the Funds updated on a daily basis, including the prior business day's NAV, and the following trading information for such business

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<sup>22</sup> All orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day.

<sup>23</sup> File Transfer Protocol ("FTP") is a standard network protocol used to transfer computer files on the Internet. Nasdaq will arrange for the daily dissemination of an FTP file with executed Share trades to member firms and market data services.

<sup>24</sup> See footnote 19.

day expressed as premiums/discounts to NAV: (a) intraday high, low, average, and closing prices of Shares in Exchange trading; (b) the midpoint of the highest bid and lowest offer prices as of the close of Exchange trading, expressed as a premium/discount to NAV (the “Closing Bid/Ask Midpoint”); and (c) the spread between highest bid and lowest offer prices as of the close of Exchange trading (the “Closing Bid/Ask Spread.”). The [www.nextshares.com](http://www.nextshares.com) website will also contain charts showing the frequency distribution and range of values of trading prices, Closing Bid/Ask Midpoints, and Closing Bid/Ask Spreads over time.

The Composition File will be disseminated through the NSCC before the open of trading in Shares on each business day and also will be made available to the public each day on a free website as noted above.<sup>25</sup> Consistent with the disclosure requirements that apply to traditional open-end investment companies, a complete list of current Fund portfolio positions will be made available at least once each calendar quarter, with a reporting lag of not more than 60 days. Funds may provide more frequent disclosures of portfolio positions at their discretion.

Reports of Share transactions will be disseminated to the market and delivered to the member firms participating in the trade contemporaneous with execution. Once a Fund’s daily NAV has been calculated and disseminated, Nasdaq will price each Share trade entered into during the day at the Fund’s NAV plus/minus the trade’s executed premium/discount. Using the final trade price, each executed Share trade will then be disseminated to member firms and market data services via an FTP file to be created for

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<sup>25</sup> See footnote 14.

exchange-traded managed funds and confirmed to the member firms participating in the trade to supplement the previously provided information to include final pricing.

Information regarding NAV-based trading prices, best bids and offers for Shares, and volume of Shares traded will be continuously available on a real-time basis throughout each trading day on brokers' computer screens and other electronic services.

#### Initial and Continued Listing

Shares will conform to the initial and continued listing criteria as set forth under Nasdaq Rule 5745. A minimum of 50,000 Shares and no less than two Creation Units of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily (on each business day that the New York Stock Exchange is open for trading) and provided to Nasdaq via the Mutual Fund Quotation Service ("MFQS") by the fund accounting agent. As soon as the NAV is entered into MFQS, Nasdaq will disseminate the NAV to market participants and market data vendors via the Mutual Fund Dissemination Service ("MFDS") so all firms will receive the NAV per share at the same time. The Reporting Authority<sup>26</sup> also will ensure that the Composition File will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding each Fund's portfolio positions and changes in the positions.

For each Fund, an estimated value of an individual Share, defined in Nasdaq Rule 5745(c)(2) as the "Intraday Indicative Value," will be calculated and disseminated at

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<sup>26</sup> See Nasdaq Rule 5745(c)(4).

intervals of not more than 15 minutes throughout the Regular Market Session<sup>27</sup> when Shares trade on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the IIV will be calculated on an intraday basis and provided to Nasdaq for dissemination via the Nasdaq Global Index Service (“GIDS”).

The IIV will be based on current information regarding the value of the securities and other assets held by a Fund.<sup>28</sup> The purpose of the IIVs is to enable investors to estimate the next-determined NAV so they can determine the number of Shares to buy or sell if they want to transact in an approximate dollar amount (e.g., if an investor wants to acquire approximately \$5,000 of a Fund, how many Shares should the investor buy?).<sup>29</sup>

The Adviser is not a registered broker-dealer, although it is affiliated with a broker-dealer. The Adviser has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of and/or changes to each Fund’s portfolio. In addition, personnel who make decisions on each Fund’s portfolio composition must be subject to procedures designed to prevent the

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<sup>27</sup> See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m. E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. E.T.).

<sup>28</sup> IIVs disseminated throughout each trading day would be based on the same portfolio as used to calculate that day’s NAV. Funds will reflect purchases and sales of portfolio positions in their NAV the next business day after trades are executed.

<sup>29</sup> Because, in NAV-Based Trading, prices of executed trades are not determined until the reference NAV is calculated, buyers and sellers of Shares during the trading day will not know the final value of their purchases and sales until the end of the trading day. A Fund’s Registration Statement, website and any advertising or marketing materials will include prominent disclosure of this fact. Although IIVs may provide useful estimates of the value of intraday trades, they cannot be used to calculate with precision the dollar value of the Shares to be bought or sold.

use and dissemination of material, non-public information regarding the open-end fund's portfolio.

In the event that (a) the Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or a sub-adviser to a Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and will maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition of and/or changes to the relevant Fund's portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

#### Trading Halts

The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in Shares. Nasdaq will halt trading in Shares under the conditions specified in Nasdaq Rule 4120 and in Nasdaq Rule 5745(d)(2)(C). Additionally, Nasdaq may cease trading Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. To manage the risk of a non-regulatory Share trading halt, Nasdaq has in place back-up processes and procedures to ensure orderly trading. Because, in NAV-Based Trading, all trade execution prices are linked to end-of-day NAV, buyers and sellers of Shares should be less exposed to risk of loss due to intraday trading halts than buyers and sellers of conventional exchange-traded funds ("ETFs") and other exchange-traded securities.

#### Trading Rules

Nasdaq deems Shares to be equity securities, thus rendering trading in Shares to

be subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in Shares from 9:30 a.m. until 4:00 p.m. E.T.

Every order to trade Shares of the Funds 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.<sup>30</sup> With certain exceptions, each order also must contain the applicable order attributes, including routing instructions and time-in-force information, as described in Nasdaq Rule 4703.<sup>31</sup>

#### Surveillance

The Exchange represents that trading in Shares will be subject to the existing trading surveillances, administered by both Nasdaq and the Financial Industry Regulatory Authority, Inc. ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>32</sup> The Exchange represents that these procedures are adequate to properly monitor trading of Shares on the Exchange and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and

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<sup>30</sup> See Nasdaq Rule 5745(h).

<sup>31</sup> See Nasdaq Rule 5745(b)(6).

<sup>32</sup> FINRA provides surveillance of trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”)<sup>33</sup> regarding trading in Shares, and in exchange-traded securities and instruments held by the Funds (to the extent such exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of a Fund’s portfolio holdings), and FINRA may obtain trading information regarding such trading from other markets and other entities.

In addition, the Exchange may obtain information regarding trading in Shares, and in exchange-traded securities and instruments held by the Funds (to the extent such exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of a Fund’s portfolio holdings), from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

In addition, the Exchange also has a general policy prohibiting the distribution of material non-public information by its employees.

#### Information Circular

Prior to the commencement of trading in a Fund, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated

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<sup>33</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of a Fund’s portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and noting that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in Shares to customers; (3) how information regarding the IIV and Composition File is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing Shares prior to or concurrently with the confirmation of a transaction; and (5) information regarding NAV-Based Trading protocols.

As noted above, all orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day. The Information Circular will discuss the effect of this characteristic on existing order types. The Information Circular also will identify the specific Nasdaq data feeds from which intraday Share prices in proxy price format may be obtained.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. Members purchasing Shares from a Fund for resale to investors will deliver a summary prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

The Information Circular also will reference that the Funds are subject to various fees and expenses described in the Registration Statements. The Information Circular will also disclose the trading hours of the Shares and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares



will be publicly available at [www.nextshares.com](http://www.nextshares.com).

Information regarding the Funds' trading protocols will be disseminated to Nasdaq members in accordance with current processes for newly listed products. Nasdaq intends to provide its members with a detailed explanation of NAV-Based Trading through a Trading Alert issued prior to the commencement of trading in Shares on the Exchange.

#### Continued Listing Representations

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or intraday indicative values, or (d) the applicability of Exchange listing rules shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by any of the Funds to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If any of the Funds are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

#### 2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act,<sup>34</sup> in general, and Section 6(b)(5) of the Act,<sup>35</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

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<sup>34</sup> 15 U.S.C. 78f(b).

<sup>35</sup> 15 U.S.C. 78f(b)(5).

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 the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares would be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5745. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Shares on Nasdaq and to deter and detect violations of Exchange rules and the applicable federal securities laws. The Adviser is not registered as a broker-dealer, but it is affiliated with a broker-dealer. The Adviser has implemented and will maintain a “fire wall” between the Adviser and its broker-dealer affiliate with respect to access to information concerning the composition of and/or changes to each Fund’s portfolio holdings. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement, to the extent necessary.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest. The Exchange will obtain a representation from each issuer of Shares that the NAV per Share will be calculated on each business day that the New York Stock Exchange is open for trading and that the NAV will be made available to all market participants at the same time. In addition, a large amount of information would be publicly available regarding the Funds and the Shares, thereby promoting market transparency.

Prior to the commencement of market trading in Shares, the Funds will be

required to establish and maintain a public website through which its current prospectus may be downloaded.<sup>36</sup> In addition, a separate website ([www.nextshares.com](http://www.nextshares.com)) will display additional information concerning the Funds updated on a daily basis, including the prior business day's NAV, and the following trading information for such business day expressed as premiums/discounts to NAV: (a) intraday high, low, average and closing prices of Shares in Exchange trading; (b) the Closing Bid/Ask Midpoint; and (c) the Closing Bid/Ask Spread.

The [www.nextshares.com](http://www.nextshares.com) website will also contain charts showing the frequency distribution and range of values of trading prices, Closing Bid/Ask Midpoints, and Closing Bid/Ask Spreads over time. The Composition File will be disseminated through the NSCC before the open of trading in Shares on each business day and also will be made available to the public each day on a free website, as noted above.<sup>37</sup> The Exchange will obtain a representation from the issuer of the Shares that the IIV will be calculated and disseminated on an intraday basis at intervals of not more than 15 minutes during trading on the Exchange and provided to Nasdaq for dissemination via GIDS. A complete list of current portfolio positions for the Funds will be made available at least once each calendar quarter, with a reporting lag of not more than 60 days. Funds may provide more frequent disclosures of portfolio positions at their discretion.

Transactions in Shares will be reported to the Consolidated Tape at the time of execution in proxy price format and will be disseminated to member firms and market data services through Nasdaq's trading service and market data interfaces, as defined

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<sup>36</sup> See footnote 19.

<sup>37</sup> See footnote 14.

above. Once each Fund's daily NAV has been calculated and the final price of its intraday Share trades has been determined, Nasdaq will deliver a confirmation with final pricing to the transacting parties. At the end of the day, Nasdaq will also post a newly created FTP file with the final transaction data for the trading and market data services.

The Exchange expects that information regarding NAV-based trading prices and volumes of Shares traded will be continuously available on a real-time basis throughout each trading day on brokers' computer screens and other electronic services. Because Shares will trade at prices based on the next-determined NAV, investors will be able to buy and sell individual Shares at a known premium or discount to NAV that they can limit by using limit orders at the time of order entry. Trading in Shares will be subject to Nasdaq Rules 5745(d)(2)(B) and (C), which provide for the suspension of trading or trading halts under certain circumstances, including if, in the view of the Exchange, trading in Shares becomes inadvisable.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of the Funds, which seek to provide investors with access to a broad range of actively managed investment strategies in a structure that offers the cost and tax efficiencies and shareholder protections of ETFs, while removing the requirement for daily portfolio holdings disclosure to ensure a tight relationship between market trading prices and NAV.

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

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

The Exchange does not believe that the proposed rule change will 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 introduction of the Funds would promote competition by making available to investors a broad range of actively managed investment strategies in a structure that offers the cost and tax efficiencies and shareholder protections of ETFs, while removing the requirement for daily portfolio holdings disclosure to ensure a tight relationship between market trading prices and NAV. Moreover, the Exchange believes that the proposed method of Share trading would provide investors with transparency of trading costs, and the ability to control trading costs using limit orders, that is not available for conventionally traded ETFs.

These developments could significantly enhance competition to the benefit of the markets and investors.

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

No written comments were either solicited or received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2017-029 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-2017-029. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing

also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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-2017-029 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

Robert W. Errett  
Deputy Secretary

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<sup>38</sup> 17 CFR 200.30-3(a)(12).