

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77505; File No. SR-FINRA-2016-012)

April 4, 2016

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to amend FINRA Rule 6184 (Transactions in Exchange-Traded Managed Fund Shares (“NextShares”))

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 29, 2016, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend FINRA Rule 6184 (Transactions in Exchange-Traded Managed Fund Shares (“NextShares”)) to provide that the FINRA/Nasdaq Trade Reporting Facility (“FINRA/Nasdaq TRF”) will make available to market participants a daily file with the final trade price for each over-the-counter transaction in exchange-traded managed fund shares (“NextShares”) reported to the FINRA/Nasdaq TRF for public dissemination purposes.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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

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6000. QUOTATION AND TRANSACTION REPORTING FACILITIES

6100. QUOTING AND TRADING IN NMS STOCKS

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6180. Transaction Reporting

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6184. Transactions in Exchange-Traded Managed Fund Shares (“NextShares”)

(a) through (d) No Change.

••• Supplementary Material: -----

.01 No Change.

.02 End of Day Processing

Members that clear transactions in NextShares directly at NSCC, e.g., via direct QSR submission, must ensure that they submit to NSCC all pricing information, including the IIV-based price on intraday submissions and the final NAV-based trade price after market close, in accordance with NSCC requirements; such information will not be provided to NSCC by FINRA.

Following publication of the NAV, the FINRA/Nasdaq Trade Reporting Facility will make available to market participants a daily file with the final NAV-based trade price for each transaction in NextShares reported during the trading day to the FINRA/Nasdaq Trade Reporting Facility for public dissemination purposes.

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

In its filing with the Commission, FINRA 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. FINRA 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

FINRA recently adopted Rule 6184⁴ relating to the reporting of over-the-counter (“OTC”) transactions in NextShares, which have been approved by the SEC for listing and trading on the Nasdaq Stock Market LLC (“Nasdaq”).⁵ As described more fully in SR-FINRA-2015-043 and SR-NASDAQ-2014-020, NextShares will trade in the secondary market using a new trading protocol called “NAV-Based Trading.” In NAV-Based Trading, all bids, offers and execution prices will be expressed as a premium or discount (which may be zero) to the fund’s next-determined net asset value per share (“NAV”), e.g., NAV-\$0.01 or NAV+\$0.01. A NextShares Fund’s NAV will be determined each business day after the close of trading, and consequently, the final value of a transaction will not be known until the end of the trading day. Because existing order transmission and processing systems commonly used by exchanges and

⁴ See Securities Exchange Act Release No. 76213 (October 21, 2015), 80 FR 65838 (October 27, 2015) (Notice of Filing and Immediate Effectiveness; File No. SR-FINRA-2015-043). Rule 6184 became operative on February 26, 2016.

⁵ See Securities Exchange Act Release No. 73562 (November 7, 2014), 79 FR 68309 (November 14, 2014) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of File No. SR-NASDAQ-2014-020).

firms are generally not designed to accommodate pricing arrangements such as NAV-Based Trading, the prices of NextShares trades and quotes will be represented intraday using a “proxy price” format (discussed more fully in SR-FINRA-2015-043 and SR-NASDAQ-2014-020). The securities information processor (“SIP”) will publicly disseminate trades in the proxy price format.

In SR-NASDAQ-2015-036, Nasdaq stated that after a NextShares Fund’s NAV is calculated, Nasdaq will price each NextShares trade executed on the exchange during the day at the Fund’s NAV plus or minus the trade’s executed premium or discount.⁶ Using the final trade price, each NextShares trade executed on the exchange will be disseminated to Nasdaq member firms and market data services via a File Transfer Protocol (“FTP”) file to be created for NextShares to supplement the previously provided information to include final pricing.⁷

Similarly, Nasdaq, Inc., as the “Business Member” under the limited liability company agreement with FINRA establishing the FINRA/Nasdaq TRF, has determined to make available to market participants a daily file in FTP format with the final NAV-adjusted trade price for each OTC transaction in NextShares reported during the trading day to the FINRA/Nasdaq TRF for public dissemination purposes. Nasdaq has represented to FINRA that the daily FTP files will be accessible at no cost to market participants on Nasdaq’s public website. FINRA is proposing to amend Rule 6184.02 to reflect the proposed FTP file.

⁶ See Securities Exchange Act Release No. 75499 (July 21, 2015), 80 FR 44406 (July 27, 2015) (Order Granting Approval of Proposed Rule Change, as Modified by Amendments Nos. 1 and 2; File No. SR-NASDAQ-2015-036).

⁷ As described in SR-NASDAQ-2015-036, FTP is a standard network protocol used to transfer computer files on the Internet, and Nasdaq will arrange for the daily dissemination of an FTP file with executed NextShares trades to Nasdaq member firms and market data services. See also Frequently Asked Questions: NextShares Exchange-Traded Managed Funds, #35, available at www.nasdaqtrader.com/content/ETFs/ETMF_FAQs.pdf.

FINRA has filed the proposed rule change for immediate effectiveness and proposes that the operative date will be on or about April 4, 2016, the date that the systems development work to support the proposed FTP file is expected to be completed by the FINRA/Nasdaq TRF.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the Act because it will further enhance market transparency and price discovery by ensuring that additional pricing information relating to OTC transactions in NextShares, i.e., the final NAV-adjusted trade price on a transaction-by-transaction basis, is available to market participants.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will enhance the pricing information relating to OTC transactions in NextShares available to market participants. The proposed rule change will not impose any reporting or other requirements on member firms, and as a result, will have no impact on member firms from a systems development and reporting perspective. Member firms that choose to trade NextShares may incur some costs to integrate the pricing information that will be provided pursuant to the proposed rule change. However, FINRA anticipates these costs to be minor because the pricing information will be accessible at no cost to market participants on

⁸ 15 U.S.C. 78o-3(b)(6).

Nasdaq's public website and also provided through data vendors, and firms will factor in any attendant costs when making the decision to enter into the market for NextShares.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative before 30 days from the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

FINRA has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver will allow the proposed rule change to become operative on or about April 4, 2016, the date that Nasdaq has designated (and represented to FINRA) as the date by which it will complete the systems development work to support the proposed FTP file. This will ensure that additional pricing information relating to OTC transactions in NextShares will be

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

available to market participants without delay and will supplement the FTP file that is already available for trades in NextShares executed on the Nasdaq exchange. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative on or about April 4, 2016.¹²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2016-012 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

¹² For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-FINRA-2016-012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of FINRA. 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-FINRA-2016-012, 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.¹³

Robert W. Errett
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).