

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79082; File No. SR-NASDAQ-2016-134)

October 11, 2016

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”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on September 28, 2016, 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 and II 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 (“NextShares”)) the common shares (“Shares”) of the exchange-traded managed funds described herein (each, a “Fund,” and collectively, the “Funds”).³

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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 (July 21, 2015), 80 FR 44406 (July 21, 2015) (SR-NASDAQ-2015-036).

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 or NextShares, as defined in Nasdaq Rule 5745(c)(1), on the Exchange.⁴ 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. Each Fund is a series of the Trust listed below and will be advised by an investment 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.⁵

1. Gabelli NextShares™ Trust

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.⁶ Each of the following Funds is a series of the Trust.⁷

⁴ The Commission approved Nasdaq Rule 5745 in Securities Exchange Act Release No. 73562 (Nov. 7, 2014), 79 FR 68309 (Nov. 14, 2014) (SR-NASDAQ-014-020) [sic].

⁵ Additional information regarding the Funds will be available on the free public website for the Funds and in the Registration Statements for the Funds.

⁶ See Registration Statement on Form N-1A for the Trust dated June 6, 2016 (File Nos. 333-211881 and 811-23160). The descriptions of the Funds and the Shares contained herein conform to the Registration Statement.

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 a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition and/or changes to each Fund's portfolio. In the future 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 a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition 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 each Fund's Shares. BNY Mellon Investment Servicing (US) Inc. will act as the custodian, transfer agent, and sub-administrator to the Funds. Interactive Data Pricing and Reference Data, Inc. will be the intraday indicative value ("IIV") calculator to the Funds.

Each Fund will be actively managed and will pursue the various principal investment strategies described below.⁸

a. Gabelli ESG NextShares™ (the "Gabelli ESG Fund")

The Gabelli ESG Fund seeks to provide capital appreciation. The Gabelli ESG Fund seeks to achieve its objective by investing substantially all, and in any case no less than 80%, of

⁷ 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).

⁸ Additional information regarding the Funds will be available on a free public website for the Funds (www.gabelli.com or www.nextshares.com.) and in the Registration Statement for the Funds.

its net assets plus borrowings for investment purposes in common and preferred stocks of companies that meet the Gabelli ESG Fund’s guidelines for social responsibility at the time of investment. Pursuant to its social responsibility guidelines, the Gabelli ESG Fund will not invest in publicly traded fossil fuel (coal, oil, and gas) companies, the top 50 defense/weapons contractors, or in companies that derive more than 5% of their revenues from the following areas: tobacco, alcohol, gaming, defense/weapons production, and companies involved in the manufacture of abortion related products.

b. Gabelli All Cap NextShares™ (the “Gabelli All Cap Fund”)

The Gabelli All Cap Fund primarily seeks to provide capital appreciation. The Gabelli All Cap Fund’s secondary goal is current income. Under normal market conditions, the Gabelli All Cap Fund invests at least 80% of its net assets plus borrowings for investment purposes in stocks that are listed on a recognized securities exchange or similar market. The Gabelli All Cap Fund may also invest in common and preferred securities of foreign issuers.

c. Gabelli Equity Income NextShares™ (the “Gabelli Equity Income Fund”)

The Gabelli Equity Income Fund seeks a high level of total return on its assets with an emphasis on income. The Gabelli Equity Income Fund will seek to achieve its investment objective through a combination of capital appreciation and current income by investing, under normal market conditions, at least 80% of its net assets plus borrowings for investment purposes in income producing equity securities. Income producing equity securities include, for example, common stock and preferred stock.

d. Gabelli Small and Mid Cap Value NextShares™ (the “Gabelli Small and Mid Cap Value Fund”)

The Gabelli Small and Mid Cap Value Fund seeks long-term capital growth. Under normal market conditions, the Gabelli Small and Mid Cap Value Fund invests at least 80% of its

net assets plus borrowings for investment purposes (“80% Policy”) in equity securities (such as common stock and preferred stock) of companies with small or medium-sized market capitalizations (“small cap” and “mid cap” companies, respectively). A company’s market capitalization is generally calculated by multiplying the number of a company’s shares outstanding by its stock price. The Gabelli Small and Mid Cap Value Fund defines “small cap companies” as those with a market capitalization generally less than \$3 billion at the time of investment and “mid cap companies” as those with a market capitalization between \$3 billion and \$12 billion at the time of investment. Subject to its 80% Policy, the Gabelli Small and Mid Cap Value Fund may invest in equity securities of companies of any market capitalization. In addition, the Gabelli Small and Mid Cap Value Fund may invest up to 25% of its total assets in securities of issuers in a single industry.

e. Gabelli Media Mogul NextShares™ (the “Gabelli Media Mogul Fund”)

The Gabelli Media Mogul Fund seeks to provide capital appreciation. Under normal market conditions, the Fund invests at least 80% of net assets plus borrowings for investment purposes in companies that were spun-off from or that are tracking stocks issued by Liberty Media Corporation, as well as in companies that resulted from subsequent mergers of any such spin-offs or stocks that track performance of companies that resulted from subsequent mergers of any such spin-offs or tracking stocks, and in public companies in which Liberty Media Corporation and its successor companies invest. The current investable universe includes approximately 28 U.S. and non-U.S. listed companies in the telecommunications, media, publishing, and entertainment 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”)⁹ 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.”¹⁰ 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 kind, it receives a basket of securities equal in value to the aggregate NAV of the Shares in the Creation Unit.¹¹

⁹ 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. 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.

¹⁰ “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 Fund’s 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.

¹¹ In compliance with Nasdaq Rule 5745(b)(5), which applies to Shares based on an international or global portfolio, each Fund’s application for exemptive relief under the Investment Company Act states that the Fund must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with securities,

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. 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 the 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 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 the Fund's portfolio.¹²

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) ("Securities Act").

¹² 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

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. 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 that consists solely of instruments that clear through NSCC, because DTC may charge more than NSCC in connection with Creation Unit transactions.¹³ The transaction fees applicable to each Fund's purchases and redemptions on a given business day will be

execution for a Fund than Authorized Participants because of the Adviser's size, experience and potentially stronger relationships in the fixed- income markets.

¹³ 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.

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. 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."¹⁴ All bids, offers and execution prices of Shares will be expressed as a premium/discount (which may be zero) to the 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. Eastern Time. 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

¹⁴ 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 will enter 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.

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, each Fund 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.

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.¹⁵ 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).

¹⁵ 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.

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”). 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 Tape¹⁶ 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 Shares bought or sold and the executed premium/discount to NAV.¹⁷

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.¹⁸ After the pricing is finalized, Nasdaq will deliver the Share trading data to NSCC for clearance and settlement,

¹⁶ 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.

¹⁷ 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.

¹⁸ 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.

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, each Fund will be required to establish and maintain a public website through which its current prospectus may be downloaded. The website will include additional Fund information 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 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. 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 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 value 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 Authority¹⁹ 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.

¹⁹ 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 Session²⁰ 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.²¹ 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?).²²

If the Adviser is a registered broker-dealer or affiliated with a broker-dealer, the Adviser has implemented a fire wall with respect to its relevant broker-dealer personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to each Fund’s portfolio. In the future event that (a) the Adviser registers as a broker-

²⁰ 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.).

²¹ 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.

²² 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.

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 a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition 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 Rule.

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. Eastern Time.

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.²³ 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 4703.²⁴

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.²⁵ 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 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”)²⁶ regarding

²³ See Nasdaq Rule 5745(h).

²⁴ See Nasdaq Rule 5745(b)(6).

²⁵ 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.

²⁶ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of a Fund’s portfolio may trade on markets that are members of

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 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.

ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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 on the Fund's website.

Information regarding Fund 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.

All statements and representations made in this filing regarding (a) the description of the Funds' portfolios, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares of the Funds on the Exchange. The issuer has represented to the Exchange that

it will advise the Exchange of any failure by any Fund 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 a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Nasdaq Rule 5800, et. seq.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act²⁷ in general, and Section 6(b)(5) of the Act²⁸ 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. If the Adviser is a registered broker-dealer or affiliated with a broker-dealer, the Adviser has implemented a “fire wall” between the Adviser and the relevant broker-dealer personnel or broker-dealer affiliate with respect to access to information concerning the composition and/or changes to the Funds’ portfolio holdings. The Exchange may obtain

²⁷ 15 U.S.C. 78f(b).

²⁸ 15 U.S.C. 78f(b)(5).

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. The website will display additional Fund information 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 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. 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 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 transacting 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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (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. Please include File Number SR-NASDAQ-2016-134 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2016-134. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the

principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2016-134 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.²⁹

Robert W. Errett
Deputy Secretary

²⁹ 17 CFR 200.30-3(a)(12).