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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75499; File No. SR-NASDAQ-2015-036)

July 21, 2015

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendments Nos. 1 and 2 Thereto, Relating to the Listing and Trading of the Shares of 18 Eaton Vance NextShares ETMFs of Either the Eaton Vance ETMF Trust or the Eaton Vance ETMF Trust II

I. Introduction

On April 10, 2015, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to list and trade the shares (“Shares”) of the following 18 exchange-traded managed funds: Eaton Vance Balanced NextShares™; Eaton Vance Global Dividend Income NextShares™; Eaton Vance Growth NextShares™; Eaton Vance Large-Cap Value NextShares™; Eaton Vance Richard Bernstein All Asset Strategy NextShares™; Eaton Vance Richard Bernstein Equity Strategy NextShares™; Eaton Vance Small-Cap NextShares™; Eaton Vance Stock NextShares™; Parametric Emerging Markets NextShares™; Parametric International Equity NextShares™; Eaton Vance Bond NextShares™; Eaton Vance TABS 5-to-15 Year Laddered Municipal Bond NextShares™; Eaton Vance Floating-Rate & High Income NextShares™; Eaton Vance Global Macro Absolute Return NextShares™; Eaton Vance Government Obligations NextShares™; Eaton Vance High Income Opportunities NextShares™; Eaton Vance High Yield Municipal Income NextShares™; and Eaton Vance National Municipal

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

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

Income NextShares™ (individually “Fund,” and collectively, “Funds”). On April 21, 2015, the Exchange filed Amendments Nos. 1 and 2 to the proposal.<sup>3</sup> The proposed rule change, as modified by Amendments Nos. 1 and 2 thereto, was published for comment in the Federal Register on April 29, 2015.<sup>4</sup> On June 8, 2015, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>6</sup> The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendments Nos. 1 and 2 thereto.

## II. Description of Proposed Rule Change

The Exchange proposes to list and trade the Shares pursuant to Nasdaq Rule 5745, which governs the listing and trading of Exchange-Traded Managed Fund Shares, as defined in Nasdaq Rule 5745(c)(1).<sup>7</sup> Each Fund is a series of either Eaton Vance ETMF Trust or Eaton Vance

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<sup>3</sup> Amendment No. 1 amended and replaced the proposed rule change in its entirety. Amendment No. 2 subsequently amended the proposal to include a new footnote to reflect a website reference.

<sup>4</sup> See Securities Exchange Act Release No. 74797 (Apr. 23, 2015), 80 FR 23831 (“Notice”).

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Securities Exchange Act Release No. 75121, 80 FR 34184 (Jun. 15, 2015). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, the Commission designated July 28, 2015 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>7</sup> The Funds would be the first exchange-traded managed funds to be listed on the Exchange.

ETMF Trust II (individually “Trust,” and collectively, “Trusts”).<sup>8</sup> Each Trust is registered with the Commission as an open-end investment company and has filed a registration statement on Form N-1A (“Registration Statements”) with the Commission.<sup>9</sup>

Eaton Vance Management will be the investment adviser (“Adviser”) to the Funds. Foreside Fund Services, LLC will be the principal underwriter and distributor of each Fund’s Shares. State Street Bank and Trust Company will act as the administrator, accounting agent, custodian, and transfer agent to the Funds. Interactive Data Corporation will be the intraday indicative value calculator to the Funds.

The Exchange has made the following representations and statements in describing the Funds.<sup>10</sup>

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<sup>8</sup> According to the Exchange, the Trusts and affiliates of the Trusts have obtained exemptive relief under the Investment Company Act of 1940 (“1940 Act”). See Investment Company Act Release No. 31361 (Dec. 2, 2014) (File No. 812-14139). The Exchange represents that, in compliance with Nasdaq Rule 5745(b)(5), which applies to Shares based on an international or global portfolio, the application for exemptive relief under the 1940 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.

<sup>9</sup> See Registration Statements on Form N-1A for the Eaton Vance NextShares Trust dated April 9, 2015 (File Nos. 333-197733 and 811-22982) and for the Eaton Vance NextShares Trust II dated April 9, 2015 (File Nos. 333-197734 and 811-22983).

<sup>10</sup> The Commission notes that additional information regarding the Trusts, the Funds, and the Shares, including investment strategies, risks, creation and redemption procedures, calculation of net asset value (“NAV”), fees, distributions, and taxes, among other things, can be found in the Notice and Registration Statements, as applicable. See supra notes 4 and 9, respectively.

A. Principal Investment Strategies of the Funds

According to the Exchange, each Fund will be actively managed and will pursue the various principal investment strategies described below.<sup>11</sup>

1. Eaton Vance Balanced NextShares™

The investment objective of this Fund is to provide current income and long-term growth of capital. The Fund normally will invest between 50% and 75% of its net assets in equity securities and between 25% and 50% of its net assets in fixed-income securities.

2. Eaton Vance Global Dividend Income NextShares™

The investment objective of this Fund is to provide current income and long-term growth of capital. The Fund normally will invest primarily in common stocks and, in the adviser's discretion, preferred stocks of U.S. and foreign companies that pay dividends.

3. Eaton Vance Growth NextShares™

The investment objective of this Fund is total return. The Fund will invest in a broadly diversified selection of equity securities, seeking companies with above-average growth and financial strength. Under normal market conditions, the Fund will invest primarily in large-cap companies.

4. Eaton Vance Large-Cap Value NextShares™

The investment objective of this Fund is total return. Under normal market conditions, the Fund will invest primarily in value stocks of large-cap companies.

5. Eaton Vance Richard Bernstein All Asset Strategy NextShares™

The investment objective of this Fund is total return. In seeking its investment objective, the Fund will have flexibility to allocate its assets in markets around the world and among

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<sup>11</sup> According to the Exchange, additional information regarding the Funds also will be available on the public website for the Funds.

various asset classes, including equity, fixed-income, commodity, currency and cash investments.

6. Eaton Vance Richard Bernstein Equity Strategy NextShares™

The investment objective of this Fund is total return. Under normal market conditions, the Fund will invest primarily in equity securities and derivative instruments that provide exposure to equity securities.

7. Eaton Vance Small-Cap NextShares™

The investment objective of this Fund is long-term capital appreciation. The Fund normally will invest primarily in equity securities of small-cap companies.

8. Eaton Vance Stock NextShares™

The investment objective of this Fund is to achieve long-term capital appreciation by investing in a diversified portfolio of equity securities. The Fund normally will invest primarily in a diversified portfolio of common stocks.

9. Parametric Emerging Markets NextShares™

The investment objective of this Fund is long-term capital appreciation. The Fund normally will invest primarily in equity securities of companies located in emerging market countries.

10. Parametric International Equity NextShares™

The investment objective of this Fund is long-term capital appreciation. The Fund normally will invest primarily in companies domiciled in developed markets outside of the United States, including securities trading in the form of depositary receipts.

11. Eaton Vance Bond NextShares™

The investment objective of this Fund is total return. The Fund normally will invest primarily in bonds and other fixed and floating-rate income instruments.

12. Eaton Vance TABS 5-to-15 Year Laddered Municipal Bond NextShares™

The investment objective of this Fund is to provide current income exempt from regular federal income tax. The Fund normally will invest primarily in municipal obligations with remaining maturities of between 5 and 15 years, the interest on which is exempt from regular federal income tax.

13. Eaton Vance Floating-Rate & High Income NextShares™

The investment objective of this Fund is to provide a high level of current income. The Fund normally will invest primarily in a combination of income-producing floating rate loans and other floating rate debt securities and high-yield corporate bonds.

14. Eaton Vance Global Macro Absolute Return NextShares™

The investment objective of this Fund is total return. The Fund will seek its investment objective by investing in securities, derivatives and other instruments to establish long and short investment exposures around the world.

15. Eaton Vance Government Obligations NextShares™

The investment objective of this Fund is to provide a high current return. The Fund normally will invest primarily in securities issued, backed or otherwise guaranteed by the U.S. Government, its agencies or instrumentalities.

16. Eaton Vance High Income Opportunities NextShares™

The primary investment objective of this Fund is to provide a high level of current income. The Fund will seek growth of capital as a secondary investment objective. The Fund

normally will invest primarily in fixed-income securities, including preferred stocks, senior and subordinated floating rate loans, and convertible securities.

17. Eaton Vance High Yield Municipal Income NextShares™

The investment objective of this Fund is to provide high current income exempt from regular federal income tax. The Fund normally will invest primarily in municipal obligations, the interest on which is exempt from regular federal income tax.

18. Eaton Vance National Municipal Income NextShares™

The investment objective of this Fund is to provide current income exempt from regular federal income tax. The Fund normally will invest primarily in municipal obligations, the interest on which is exempt from regular federal income tax.

B. Portfolio Disclosure

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.

C. Intraday Indicative Value

For each series of Shares, 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>12</sup> when Shares trade on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the Intraday Indicative Value will be calculated on an intraday basis and provided to Nasdaq

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<sup>12</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.).

for dissemination via the Nasdaq Global Index Service (“GIDS”). The Intraday Indicative Value will be based on current information regarding the value of the securities and other assets held by a Fund.<sup>13</sup> The purpose of the Intraday Indicative Value 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>14</sup>

D. NAV-Based Trading

Shares will be purchased and sold in the secondary market at prices directly linked to the Fund’s next-determined NAV using a new trading protocol called “NAV-Based Trading.” 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).<sup>15</sup> 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

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<sup>13</sup> The Intraday Indicative Value 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>14</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 Intraday Indicative Values 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.

<sup>15</sup> According to the Exchange, 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.

contingent upon the determination of NAV. Nasdaq represents that all Shares listed on the Exchange will have a unique identifier associated with their ticker symbols, which will indicate that the Shares are traded using NAV-Based Trading.

According to the Exchange, 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>16</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 represents that it 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. 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 may 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 may source intraday Share prices in proxy price format from the Consolidated Tape and other Nasdaq data feeds (e.g., Nasdaq

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<sup>16</sup> According to the Exchange, 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.

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. 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.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange’s proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>17</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>18</sup> which requires, among other things, that the Exchange’s rules be 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Shares will be subject to Rule 5745, which sets forth the initial and continued listing criteria applicable to Exchange-Traded Managed Fund Shares. 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 Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities.

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<sup>17</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

Nasdaq represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>19</sup> The Exchange represents that its surveillance procedures are adequate to properly monitor Exchange trading of the Shares and to deter and detect violations of Exchange rules and applicable federal securities laws. 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”) 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.

Prior to the commencement of trading, 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: (a) the procedures for

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<sup>19</sup> The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement, and that the Exchange is responsible for FINRA’s performance under this regulatory services agreement.

purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) the dissemination of information regarding the Intraday Indicative Value and Composition File; (d) the requirement that members deliver a prospectus to investors purchasing Shares prior to or concurrently with the confirmation of a transaction; and (e) information regarding NAV-Based Trading protocols.

The Information Circular also will identify the specific Nasdaq data feeds from which intraday Share prices in proxy price format may be obtained. 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. In addition, 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

Nasdaq represents that the Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to each Fund's portfolio. In the event (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, the applicable entity will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as the case may be, 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.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>20</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Information regarding NAV-based trading prices, best bids and offers for Shares, and volume of the Shares traded will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. 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 and separately disseminated to member firms and market data services through the Exchange data feeds. 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<sup>21</sup> 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.

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 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

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<sup>20</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>21</sup> According to Nasdaq, 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.

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.

This approval order is based on all of the Exchange’s representations, including those set forth above and in the Notice,<sup>22</sup> and the Exchange’s description of the Funds. The Commission notes that the Funds and the Shares must comply with the requirements of Nasdaq Rule 5745 to be listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments Nos. 1 and 2 thereto, is consistent with Section 6(b)(5) of the Act<sup>23</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change (SR-NASDAQ-2015-036), as modified by Amendments Nos. 1 and 2 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

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<sup>22</sup> See supra note 4.

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> 17 CFR 200.30-3(a)(12).

Robert W. Errett,  
Deputy Secretary.

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