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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77232; File No. SR-NASDAQ-2016-026)

February 25, 2016

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 17, 2016, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

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

¹ 15 U.S.C. § 78s(b)(1).

² 17 C.F.R. § 240.19b-4.

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

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

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

1. Purpose

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

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

³ The Commission approved Nasdaq Rule 5745 in Securities Exchange Act Release No. 34-73562 (Nov. 7, 2014), 79 FR 68309 (Nov. 14, 2014) (SR-NASDAQ-2014-020).

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

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

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

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

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

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

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

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

⁴ See Nasdaq Rule 11890(a)(2)(C)(1).

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

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

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

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

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

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act⁸ in general and Section 6(b)(5) of the Act⁹ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

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

⁸ 15 U.S.C. § 78f(b).

⁹ 15 U.S.C. § 78f(b)(5).

the proposed rule change to implement a Proxy Price Protection threshold is similar to existing mechanisms on other markets¹⁰ and would reduce the risk of and potentially prevent the execution of orders that are potentially erroneous from occurring on the Exchange. The proposed rule change will reduce confusion and add clarity around this issue and thereby promote just and equitable principles of trade and protect investors.

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

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

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

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

Written comments were neither solicited nor received.

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and

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

¹¹ 15 U.S.C. § 78f(b)(4) and (5).

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will allow the Exchange to implement a Proxy Price Protection threshold similar to existing mechanisms on other markets and would reduce the risk of and potentially prevent the erroneous execution of orders on the Exchange. Accordingly, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.¹⁴

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-NASDAQ-2016-026 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-2016-026. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 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 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-2016-026, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Robert W. Errett
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).

