

become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹²

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),¹³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange 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 because the proposal is similar to the rules of other options exchanges and the Exchange's proposal does not raise any new or novel issues. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing with the Commission.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: (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 email to rule-comments@sec.gov. Please include File Number SR-GEMX-2017-50 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.

All submissions should refer to File Number SR-GEMX-2017-50. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-GEMX-2017-50, and should be submitted on or before November 24, 2017.

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

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81973; File No. SR-NASDAQ-2017-090]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Eaton Vance Oaktree Diversified Credit NextShares™ Under Nasdaq Rule 5745

October 27, 2017.

I. Introduction

On August 30, 2017, 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")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade common shares ("Shares") of the Eaton Vance Oaktree Diversified Credit NextShares™ ("Fund") under Nasdaq Rule 5745. The proposed rule change was published for comment in the **Federal Register** on September 15, 2017.³ On September 27, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 81574 (September 11, 2017), 82 FR 43423 ("Notice").

⁴ Amendment No. 1 to the proposed rule change replaces and supersedes the original filing in its entirety. In Amendment No. 1, the Exchange, among other things: (i) Clarified that each of the Adviser (as defined below) and the Sub-Adviser (as defined below) is affiliated with a broker-dealer and each has implemented and will maintain a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio and that personnel who make decisions on the Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio; (ii) stated that the credit-related investments that the Fund will invest in will include mortgage-backed securities and mortgage-related securities; (iii) clarified that the Financial Industry Regulatory Authority, Inc. ("FINRA"), on behalf of the Exchange, will communicate as needed with, and may obtain information from, other markets and entities that are members of the Intermarket Surveillance Group ("ISG") regarding trading in the Shares and in exchange-traded securities and instruments held by the Fund (to the extent those exchange-traded securities and instruments are known through the publication of the Composition File (as referenced herein) and periodic public disclosures of the Fund's portfolio holdings), and the Exchange may obtain such trading information from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement; (iv) clarified that the Exchange will obtain a representation from the issuer of the Shares that the net asset value ("NAV") per Share will be calculated daily (on each day the New York Stock Exchange is open for trading) and provided to Nasdaq via the Mutual

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ 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).

¹⁵ 17 CFR 200.30-3(a)(12).

received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1.

II. Exchange's Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5745, which governs the listing and trading of Exchange-Traded Managed Fund Shares, as defined in Nasdaq Rule 5745(c)(1). The Fund is a series of the Eaton Vance NextShares Trust II ("Trust"). The Exchange represents that the Trust is registered with the Commission as an open-end investment company and that it has filed a registration statement on Form N-1A ("Registration Statement") with the Commission with respect to the Fund.⁵ Eaton Vance Management ("Adviser") will be the Adviser to the Fund.⁶ Oaktree Capital Management, L.P. ("Sub-Adviser") will be the Sub-Adviser to the Fund.

Foreside Fund Services, LLC will be the principal underwriter and distributor of the Fund's Shares. State Street Bank and Trust Company will act as the accounting agent, custodian, and transfer agent to the Fund. ICE Data Services will be the intraday indicative value calculator to the Fund.

The Exchange has made the following representations and statements in describing the Fund.⁷ According to the

Fund Quotation Service ("MFQS") by the Fund accounting agent and that as soon as the NAV is entered into the MFQS, Nasdaq will disseminate the NAV to market participants and market data vendors via the Mutual Fund Dissemination Service ("MFDS") so all firms will receive the NAV per Share at the same time; and (v) corrected typos and removed redundant information. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nasdaq-2017-090/nasdaq2017090-2605293-161141.pdf>. Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

⁵ See Post-Effective Amendment No. 3 to the Registration Statement on Form N-1A for the Trust dated August 8, 2017 (File Nos. 333-197734 and 811-22983).

⁶ According to the Exchange, the Commission has issued an order granting the Adviser, Eaton Vance NextShares Trust, and the Trust and certain affiliates exemptive relief under the Investment Company Act of 1940 ("1940 Act"). See Investment Company Act Release No. 31361 (December 2, 2014) (File No. 812-14139) ("Order"). In compliance with Nasdaq Rule 5745(b)(5), which applies to Shares based on an international or global portfolio, the application for the Order states that the Fund 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.

⁷ The Commission notes that additional information regarding the Trust, the Fund, and the

Exchange, the Fund will be actively managed and will pursue the principal investment strategies described below.⁸

A. Principal Investment Strategies

The investment objective of the Fund is total return. The Fund will invest at least 80% of its net assets (plus any borrowings for investment purposes) in credit-related investments (the "80% Policy"). For purposes of the 80% Policy, "credit-related investments" are fixed-income, variable rate, and floating-rate securities, as well as derivatives that provide exposure to such investments. Credit-related investments are corporate debt, senior loans, structured credit investments, emerging market debt, real estate debt,⁹ and convertible securities.

B. Portfolio Disclosure and Composition File

Consistent with the disclosure requirements that apply to traditional open-end investment companies, a complete list of the Fund's current portfolio positions will be made available at least once each calendar quarter, with a reporting lag of not more than 60 days. The Fund may provide more frequent disclosures of portfolio positions at its discretion.

As defined in Nasdaq Rule 5745(c)(3), the "Composition File" is the specified portfolio of securities and/or cash that the Fund will accept as a deposit in issuing a creation unit of Shares, and the specified portfolio of securities and/or cash that the Fund will deliver in a redemption of a creation unit of Shares. The Composition File will be disseminated through the National Securities Clearing Corporation once each business day before the open of trading in Shares on that day and also will be made available to the public each day on a free Web site.¹⁰ Because the Fund seeks to preserve the confidentiality of its current portfolio trading program, the Fund's Composition File generally will not be a pro rata reflection of the Fund's

Shares, including investment strategies, risks, creation and redemption procedures, calculation of NAV, fees, distributions, and taxes, among other things, can be found in Amendment No. 1 and the Registration Statement, as applicable. See *supra* notes 4 and 5, respectively, and accompanying text.

⁸ According to the Exchange, additional information regarding the Fund will be available on a free public Web site for the Fund (www.eatonvance.com and/or www.nextshares.com) and in the Registration Statement for the Fund.

⁹ Real estate debt includes mortgage-backed securities and mortgage-related securities.

¹⁰ The Exchange represents that the free public Web site containing the Composition File will be at www.eatonvance.com and/or www.nextshares.com.

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 the Fund generally will not be represented in the Fund's Composition File until the purchase has been completed. Similarly, securities that are held in the Fund's portfolio but are in the process of being sold may not be removed from its Composition File until the sale is substantially completed. When creating and redeeming Shares in-kind, the Fund 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.¹¹

C. Intraday Indicative Value

An estimated value of an individual Share, defined in Nasdaq Rule 5745(c)(2) as the "Intraday Indicative Value" ("IIV"), will be calculated and disseminated at intervals of not more than 15 minutes throughout the Regular Market Session¹² 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. The IIV will be based on current information regarding the value of the securities and other assets held by the Fund.¹³ The purpose of the IIV 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.¹⁴

¹¹ In determining whether the 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.

¹² See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4:00 a.m. to 9:30 a.m. Eastern Time ("E.T."); (2) Regular Market Session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m. E.T.; and (3) Post-Market Session from 4:00 p.m. or 4:15 p.m. to 8:00 p.m. E.T.).

¹³ The IIV disseminated throughout each trading day would be based on the same portfolio as used to calculate that day's NAV. The Fund will reflect purchases and sales of portfolio positions in its NAV the next business day after trades are executed.

¹⁴ In NAV-Based Trading (as referenced herein), prices of executed trades are not determined until the reference NAV is calculated, so buyers and sellers of Shares during the trading day will not

Continued

D. 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 the Fund's next-determined NAV using a 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).¹⁵ The Fund's NAV will be determined each business day, normally as of 4:00 p.m. E.T. Trade executions will be binding at the time orders are matched on Nasdaq's facilities, with the transaction prices contingent upon the determination of NAV. Nasdaq represents that all Shares listed on the Exchange will have a unique identifier associated with their ticker symbol, 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.¹⁶ In the systems used to transmit and process transactions in Shares, the 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 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 the 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.¹⁷ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,¹⁸ 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 Nasdaq 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 the Fund will be outstanding at the commencement of trading on the Exchange.

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Every order to trade Shares of the Fund is subject to the proxy price protection threshold of plus/minus \$1.00, which determines the lower and upper thresholds for the life of the order and provides that the order will be cancelled at any point if it exceeds \$101.00 or falls below \$99.00.¹⁹ 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 4703.²⁰

Nasdaq also represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.²¹ The Exchange represents that these surveillance 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. FINRA, on behalf of the Exchange, will communicate as needed with, and may obtain information from, other markets and entities that are members of the ISG regarding trading in the Shares, and in exchange-traded securities and instruments held by the Fund (to the extent those exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of the Fund's portfolio holdings). In addition, the Exchange may obtain information regarding trading in the Shares, and in exchange-traded securities and instruments held by the Fund (to the extent those exchange-traded securities and instruments are known through the publication of the Composition File and periodic public disclosures of the Fund's portfolio holdings), from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able

know the final value of their purchases and sales until the end of the trading day. The Exchange represents that the Registration Statement, Web site, and any advertising or marketing materials will include prominent disclosure of this fact. The Exchange states that although the IIV 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.

¹⁵ 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.

¹⁶ 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 that day. Prior to the commencement of trading in the Fund, the Exchange will inform its members in an information circular ("Information Circular") of the effect of this characteristic on existing order types.

¹⁷ 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).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ *See* Nasdaq Rule 5745(h).

²⁰ *See* Nasdaq Rule 5745(b)(6).

²¹ The Exchange states that FINRA provides surveillance of 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.

to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.

Prior to the commencement of trading in the 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: (a) The procedures for 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) how information regarding the IIV and Composition File is disseminated; (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 that day, and 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 states that each of the Adviser and the Sub-Adviser is not a registered broker-dealer; however, each is affiliated with a broker-dealer. Nasdaq further states that each of the Adviser and the Sub-Adviser has implemented and will maintain a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition of, and/or changes to, the Fund's portfolio.²² In

addition, personnel who make decisions on the Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. The Reporting Authority²³ will implement and maintain, or ensure that the Composition File will be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio positions and changes in the positions. In the event that (a) the Adviser or the Sub-Adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser to the Fund is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as the case may be, regarding access to information concerning the composition of, and/or changes to, the Fund's portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

The Commission 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,²⁴ 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 Shares traded will be continuously available on a real-time basis throughout each trading 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 Tape²⁵ and separately disseminated to member firms and market data services through the Exchange data feeds.

The Commission notes that 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 a File Transfer Protocol ("FTP") file²⁶ that will be created for exchange-traded managed funds and will be confirmed to the member firms participating in the trade to supplement the previously provided information with final pricing.

The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily (on each day that the New York Stock Exchange is open for trading) and provided to Nasdaq via the MFQS by the Fund accounting agent. As soon as the NAV is entered into the MFQS, Nasdaq will disseminate the NAV to market participants and market data vendors via the MFDS so that all firms will receive the NAV per share at the same time.

The Exchange further represents that it may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in Nasdaq Rule 4120 and in Nasdaq Rule 5745(d)(2)(C). Additionally, the Exchange may cease trading the Shares if other unusual conditions or circumstances exist that, in the opinion of the Exchange, make further dealings on the Exchange 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. Prior to the commencement of market trading in the Shares, the Fund will be required to establish and maintain a

²² See Amendment No. 1, *supra* note 4. The Exchange further represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, each of the Adviser and the Sub-Adviser, and its related personnel, are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers

Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

²³ See Nasdaq Rule 5745(c)(4).

²⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

²⁵ Due to systems limitations, the Consolidated Tape will report intraday execution prices and quotes for Shares using a proxy price format. Nasdaq has represented that it 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 will 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.

²⁶ According to Nasdaq, 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.

public Web site through which its current prospectus may be downloaded.²⁷ The Web site will include additional information concerning the Fund updated on a daily basis, including the prior business day's NAV, and the following trading information for that 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 ("Closing Bid/Ask Midpoint"); and (c) the spread between highest bid and lowest offer prices as of the close of Exchange trading ("Closing Bid/Ask Spread."). The Web site 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 Exchange represents that all statements and representations made in the filing regarding: (a) The description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of the reference asset or IIV, or (d) the applicability of Exchange listing rules shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the 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.²⁸ If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures for the Fund under the Nasdaq 5800 Series.

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendment No. 1.²⁹ In particular, the Commission notes that, although the

Shares will be available for purchase and sale on an intraday basis, the Shares will be purchased and sold at prices directly linked to the Fund's next-determined NAV. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5745 and the conditions set forth in this proposed rule change to be listed and traded on the Exchange on an initial and continuing basis.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5)³⁰ and Section 11A(a)(1)(C)(iii) of the Act,³¹ 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,³² that the proposed rule change (SR-NASDAQ-2017-090), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81967; File No. SR-MIAX-2017-44]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend MIAx Options Rule 518 Relating to Derived Orders

October 27, 2017.

Pursuant to the provisions of 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 October 19, 2017, Miami International Securities Exchange, LLC ("MIAx Options" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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 is filing a proposal to amend Exchange Rule 518(a)(9) to: (i) Update the definition of a derived order on the Exchange, (ii) clarify the circumstances under which a derived order is generated by the Exchange's System, and the price at which a derived order may be generated, and (iii) expand the situations under which a derived order is removed from the Exchange's Simple Order Book.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.miaxoptions.com/rule-filings/> at MIAx Options' principal office, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend Exchange Rule 518(a)(9) to: (i) Update the definition of a derived order on the Exchange, (ii) clarify the circumstances under which a derived order is generated by the Exchange's System,³ and the price at which a derived order may be generated, and (iii) expand the situations under which a derived order is removed from the Exchange's Simple Order Book.⁴

A "derived order" is an Exchange-generated limit order on the Simple Order Book that represents either the bid or offer of one component of a complex order resting on the Strategy

²⁷ The Exchange represents that the Web site containing this information will be at www.eatonvance.com and/or www.nextshares.com.

²⁸ The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 78005 (Jun. 7, 2016), 81 FR 38247 (Jun. 13, 2016) (SR-BATS-2015-100). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of a fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

²⁹ See *supra* note 4.

³⁰ 15 U.S.C. 78f(b)(5).

³¹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

³² 15 U.S.C. 78s(b)(2).

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁴ The "Simple Order Book" is the Exchange's regular electronic book of orders and quotes. See Exchange Rule 518(a)(15).