

price range by adding the threshold amount to and subtracting the threshold amount from the Nasdaq Best Bid. If the Opening Cross price is lower than the closing price used under Test A, then the Exchange would establish the price range by adding the threshold amount to and subtracting the threshold amount from the Nasdaq Best Offer. If a security does not have a Nasdaq Official Closing Price or consolidated closing price, as applicable, then the Exchange would use a price of \$0. If the Opening Cross price for a security falls outside of the relevant price range, then no Opening Cross would occur in the security; MOO, LOO, OIO, and Early Market Hours orders would be cancelled; and the Exchange would open that security for market hours trading consistent with Rule 4752(c).<sup>27</sup>

#### Implementation

The Exchange proposes to implement the Opening Cross Price Tests in stages over the course of approximately four weeks, beginning with a small number of securities.<sup>28</sup> The Exchange states that the implementation details would be published via an Exchange Trader Alert and be posted on the NasdaqTrader Web site.<sup>29</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>30</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>31</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 Commission notes that the proposal is designed to enhance the price protections for the Exchange's opening process, to mitigate the potential for mispriced trades, and to mitigate the need to use the Exchange's

clearly erroneous trade nullification process. In particular, as discussed above, the proposed Opening Cross Price Tests are designed to mitigate the potential for a mispriced Opening Cross when an order or quote entered by a participant in error establishes one side of the QBBO and significantly skews the Opening Cross price for the security. As noted by the Exchange, the proposal would help ensure that the Opening Cross price for a security is reasonably related to the market and not the product of erroneous order entry. The Commission also notes that a commenter expressed support for the proposal, stating that the "proposed change to avoid a biased or erroneous opening due to an inadvertent or mistaken submission of a pre-open order and price is a reasonable change by NASDAQ."<sup>32</sup> Based on the foregoing, the Commission believes that the proposed Opening Cross Price Tests are consistent with the Act.

The Commission also believes that the Exchange's proposal to implement the Opening Cross Price Tests in stages is consistent with the Act because it would help to limit potential market disruption if the Exchange experiences a technical issue with the implementation.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>33</sup> that the proposed rule change (SR-NASDAQ-2015-159) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-04505 Filed 3-1-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77230; File No. SR-ISE Gemini-2016-01]

### Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct the Text of ISE Gemini Rule 306

February 25, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or the "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 18, 2016, ISE Gemini, LLC (the "Exchange" or "ISE Gemini") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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

ISE Gemini proposes to correct, .08 of Supplementary Material to Rule 306, Registration Requirements, which describes the categories of registration and respective qualification examinations required for individual associated persons ("associated persons") that engage in the securities activities of members on the Exchange. This amendment proposes to replace the inadvertent use of the term "Permit Holder" with "Member" which is the correct term used throughout the ISE Gemini Rulebook to describe a member of the Exchange. The text of the proposed rule change is available on the Exchange's Web site at [www.ise.com](http://www.ise.com), at the principal office of the Exchange, 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 self-regulatory organization 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,

<sup>27</sup> See Notice, 81 FR at 1242; see also proposed Rule 4752(d)(2)(F)(iii).

<sup>28</sup> See Notice, 81 FR at 1243.

<sup>29</sup> See *id.*

<sup>30</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>31</sup> 15 U.S.C. 78f(b)(5).

<sup>32</sup> See Kubitz Letter, *supra* note 4. This commenter also expressed broader concerns regarding the availability of information about pre-market activities and regarding the circumstances under which pre-market activities would constitute manipulation, in light of the events of August 24, 2015. See *id.*

<sup>33</sup> 15 U.S.C. 78s(b)(2).

<sup>34</sup> 17 CFR 200.30-3(a)(12).

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

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

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 purpose of this proposed rule change is to make corrections to .08 of Supplementary Material to Rule 306, Registration Requirements, which describes the categories of registration and respective qualification examinations required for associated persons that engage in the securities activities of members on the Exchange. This amendment proposes to replace the inadvertent use of the term "Permit Holder" with "Member" because "Member" is the correct term used throughout the ISE Gemini Rulebook to describe a member of the Exchange.

In December of 2015, ISE Gemini proposed to, among other things, (1) replace the Proprietary Trader registration category and the Series 56 Proprietary Trader registration qualification examination with the Securities Trader category of registration and the Series 57 Securities Trader registration qualification examination for Securities Traders respectively and (2) replace the Proprietary Trader Principal registration category with the registration category of Securities Trader Principal and require Securities Trader Principals to take the Series 57 qualification examination in addition to the Series 24 qualification examination.<sup>3</sup>

Currently, .08 of Supplementary Material to Rule 306, Registration Requirements, inadvertently uses the term "Permit Holder" rather than "Member," which is the correct term used throughout the ISE Gemini Rulebook describe a member of the Exchange. ISE Gemini now proposes to amend .08 to Supplementary Material to Rule 306 to reflect ISE Gemini's longstanding use of the term "Member" to describe members of the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 Exchange believes it is appropriate to make the proposed replacement of "Permit Holder" with "Member" so that the correct term is used in its rules. Additionally, replacing the inadvertent use of the term "Permit Holder" with "Member" will create consistency and eliminate confusion in its rules.

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

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act because ISE Gemini is correcting its rule text to replace the inadvertent use of the term "Permit Holder" with "Member" because "Member" is the correct term used throughout the ISE Gemini Rulebook to describe a member of the Exchange.

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

The Exchange has neither solicited nor received written comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup> The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change, or such shorter time as designated by the Commission, as required by Rule 19b-4(f)(6).

At any time within 60 days of the filing of such 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE Gemini-2016-01 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-ISE Gemini-2016-01. 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 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

<sup>3</sup> See Securities Exchange Act Release No. 76836 (January 5, 2016), 81 FR 1263 (January 11, 2016), SR-ISE Gemini-2015-28.

<sup>4</sup> 15 U.S.C. 78f(b).

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

should refer to File Number SR–ISE Gemini–2016–01 and should be submitted by March 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77240; File No. TP 15–06]

### Order Granting Limited Exemptions From Exchange Act Section 11(d), Exchange Act Rules 10b–10, 10b–17, and 11d1–2, and Rules 101 and 102 of Regulation M to Eaton Vance ETMF Trust, Eaton Vance NextShares Trust II, Eaton Vance Balanced NextShares, and Other Exchange-Traded Managed Funds Pursuant to Exchange Act Section 36, Exchange Act Rules 10b–10(f) and 10b–17(b)(2), and Rules 101(d) and 102(e) of Regulation M

February 25, 2016.

By letter dated February 25, 2016 (the “Letter”), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for Eaton Vance ETMF Trust and Eaton Vance NextShares Trust II (each a “Trust”), on behalf of each Trust, 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 5-to-15 Year Laddered Municipal Income 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, Eaton Vance National Municipal Income NextShares, and any future exchange-traded managed funds operating under the same representations and adhering to the same conditions as set forth in this Order (each a “Fund” and, collectively,

the “Funds”), any national securities exchange or national securities association on or through which shares issued by the Funds (“Shares”) may subsequently trade (“Exchange”), and persons or entities engaging in transactions in Shares (collectively, the “Requestors”) requested exemptions, or interpretive or no-action relief, from Section 11(d)(1) of the Securities Exchange Act of 1934, as amended (“Exchange Act”), Rules 10b–10, 10b–17, and 11d1–2 thereunder, and Rules 101 and 102 of Regulation M, in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares.

Shares of each Fund will be issued by a Trust, and each Trust will be registered with the Commission under the Investment Company Act of 1940, as amended (“1940 Act”), as an open-end management investment company. The Funds will be listed on an Exchange and will also be actively managed by an investment adviser registered under the Investment Advisers Act of 1940, but may be sub-advised by other investment advisers. The Funds are not actively managed exchange traded funds (“ETFs”) but will be structured similarly to actively managed ETFs. Specifically, the Funds will be investment companies that issue shares that trade individually on an Exchange but can be purchased from and redeemed with the issuing investment company through authorized participants only in large aggregations. The principal difference between the Funds and ETFs is that, unlike with the trading in ETF shares, the trading price of Shares will be directly linked to the relevant Fund’s end-of-day net asset value (“NAV”). In connection with this “NAV-Based Trading,” all bids, offers, and execution prices will be expressed as a market-determined premium or discount (e.g., +\$0.01, –\$0.02) to that day’s NAV. For each trade, the premium or discount to NAV (which may be zero) is locked in at trade execution and the final transaction price (i.e., NAV plus or minus the market-determined premium/discount to NAV) is determined at the end of the day when the relevant Fund’s NAV is computed. Because all transaction prices are based on an end-of-day NAV, the Funds will not need to disclose portfolio holdings on a daily basis in order to maintain a close relationship between Share trading prices and NAV, as is currently the case with actively managed ETFs.

In the present exemptive request, the Requestors are seeking relief for 18 “Initial ETMFs,” the named Funds above, with a variety of investment objectives. The Requestors are also

seeking relief for future, unidentified Funds that will be structured in the same way, operating under the same representations and adhering to the same conditions as described in this Order but may have other investment objectives.

The Requestors represent, among other things, the following:

- Shares of the Funds will be issued by the Trusts which are open-end management investment companies that are registered with the Commission;<sup>1</sup>
- The Trusts will continuously redeem aggregations of Shares at net asset value (“NAV”) and the Shares should routinely trade at tight bid-ask spreads and narrow premiums and discounts to NAV;
- Shares of the Funds will be listed and traded on an Exchange;
- The Exchange or other market information provider will disseminate every 15 minutes throughout the trading day through the NASDAQ OMX Global Index Data Service the intraday indicative value (“IIV”) of Shares;<sup>2</sup>
- The methodology for calculating the NAV will be fully disclosed in the prospectus and any modifications to the methodology used to calculate NAV will be fully disclosed to current and prospective investors prior to implementation;
- The trading price of Shares will be directly linked to the relevant Fund’s end-of-day NAV in that all bids, offers, and execution prices will be expressed as a market-determined premium or discount (e.g., +\$0.01, –\$0.02) to that day’s NAV;
- For each trade, the premium or discount to NAV is locked in at trade execution and the final transaction price is determined at the end of the day when the relevant Fund’s NAV is computed;
- Because all transaction prices are based on an end-of-day NAV, the Funds will not need to disclose portfolio holdings on a daily basis in order to maintain a close relationship between Share trading prices and NAV;
- 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;

<sup>1</sup> See Investment Company Act Rel. No. 31361 (Dec. 2, 2014).

<sup>2</sup> As explained in the Letter, unlike for ETFs, which arrange for IIVs to be disseminated every 15 seconds, IIVs for the Funds will not provide pricing signals for market intermediaries or other buyers and sellers of Shares seeking to estimate the difference between the value of the Funds’ portfolios and the price at which Shares are currently trading. In NAV-Based Trading, the secondary market premium/discount that applies to an ETMF is always fully transparent and does not depend on dissemination of IIVs.

<sup>8</sup> 17 CFR 200.30–3(a)(12).