

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.⁸

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;¹
- 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;²
- 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;

¹ See Investment Company Act Rel. No. 31361 (Dec. 2, 2014).

² 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.

⁸ 17 CFR 200.30–3(a)(12).

- The Consolidated Tape will report intraday execution prices and quotes for Funds using a “proxy” price format, however, the listing Exchange will separately report real-time execution prices and quotes to member firms and providers of market data services in the “NAV – \$0.01/NAV+\$0.01” (or similar) display format, and otherwise seek to ensure that representations of intraday bids, offers and execution prices for Funds that are made available to the investing public follow the same display format;

- At the start of each trading day, the price will re-set to the “proxy” price to the NAV;

- On any business day, any market maker in the Funds can earn profits by entering into transactions with the relevant Fund to purchase (or redeem) the number of Creation Units corresponding to the net amount of Shares the market maker has sold (or purchased) that day in the secondary market, buying (or selling) the equivalent quantities of basket instruments and selling any sub-Creation Unit Share inventory in market transactions prior to the market close;

- A market maker’s profit will equal the aggregate net premium (or discount) versus NAV at which the Shares are sold (or bought) plus the aggregate net discount (or premium) versus market-closing prices at which basket instruments are bought (or sold), less the transaction fee that applies; and

- No intraday hedging is necessary to manage the market maker’s risk position, and any required overnight hedging can be limited to amounts readily addressable on a macro basis by the Funds maintaining relatively small Creation Unit sizes.

Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.³

Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any “distribution participant” and its “affiliated purchasers” from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable

³ The Funds operate under exemptions from the definitions of “open-end company” under Section 5(a)(1) of the 1940 Act and “redeemable security” under Section 2(a)(32) of the 1940 Act. The Funds and their securities do not meet those definitions.

restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines “distribution” to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, and other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trusts are registered open-end management investment companies that will continuously redeem at the NAV Creation Units of Shares of the Funds, and that, 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, and that the Shares should routinely trade at tight bid/ask spreads and narrow premiums and discounts to NAV, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trusts an exemption from Rule 101 of Regulation M, pursuant to paragraph (d) of Rule 101 of Regulation M with respect to transactions in the Funds as described in the Letter, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Funds to bid for or purchase such Shares during their participation in such distribution.⁴

Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, and any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or

⁴ Additionally, we confirm the interpretation that a redemption of Creation Units of Shares of the Funds and the receipt of securities in exchange by a participant in a distribution of Shares of the Funds would not constitute an “attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period” within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trusts are registered open-end management investment companies that will redeem at the NAV Creation Units of Shares of the Funds, and that 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, and that the Shares should routinely trade at tight bid/ask spreads and narrow premiums and discounts to NAV the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trusts an exemption from Rule 102 of Regulation M, pursuant to paragraph (e) of Rule 102 of Regulation M with respect to transactions in the Funds as described in the Letter, thus permitting the Funds to redeem Shares of the Funds during the continuous offering of such Shares.

Rule 10b–17

Rule 10b–17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b–17(b). Based on the representations and facts in the Letter, in particular that the concerns that the Commission raised in adopting Rule 10b–17 generally will not be implicated if exemptive relief, subject to the conditions below, is granted to the Trusts because market participants will receive timely notification of the existence and timing of a pending distribution,⁵ we find that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trusts a conditional exemption from Rule 10b–17.

Exchange Act Section 11(d)(1) and Rule 11d1–2 Thereunder

Section 11(d)(1) of the Exchange Act prohibits a broker-dealer from effecting any transactions in connection with which he directly or indirectly extends or maintains credit or arranges for the extension or maintenance of credit to or for a customer on any security, other than an exempted security, which was part of a new issue in the distribution

⁵ We also note that timely compliance with Rule 10b–17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Funds. This is because it is not possible for the Funds to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

of which the broker-dealer participated as a member of a selling syndicate or group within thirty days prior to such transaction. Fund shares are distributed in a continuous manner, and broker-dealers selling such securities are therefore participating in the “distribution” of a new issue for purposes of Section 11(d)(1).⁶

You requested relief from Section 11(d)(1) and Rule 11d1–2 thereunder with respect to certain transactions in Fund shares effected by broker-dealers. You note that each Trust is an open-end management investment company under the Investment Company Act of 1940, which intends to introduce 18 series, each of which would operate as an exchange-traded managed fund (“ETMF”). Furthermore, each Trust will issue and redeem Shares in specified aggregations of Shares, called Creation Units. Each Trust has filed a registration statement on Form N–1A and their Shares will be listed on an Exchange. Each Trust will be overseen by a board of trustees which will maintain the composition requirements of Section 10 of the 1940 Act. Each ETMF will adopt fundamental policies consistent with the 1940 Act and be classified as “diversified” or “non-diversified” under the 1940 Act. Each ETMF intends to maintain the required level of diversification, and otherwise conduct its operations, so as to meet the regulated investment company (“RIC”) diversification requirements of the Internal Revenue Code of 1986, as amended.⁷

⁶ See, e.g., Extension of Credit by Broker-Dealers on Investment Company Shares, Exchange Act Release No. 21,577 (Dec. 18, 1984), 49 FR 50172 (Dec. 27, 1984).

⁷ Section 851(b)(3) of the Internal Revenue Code, of 1986, 26 U.S.C. 851(b)(3), as amended, states in relevant part that a corporation is a regulated investment company only if:

At the close of each quarter of the taxable year—
(A) at least 50 percent of the value of its total assets is represented by—

(i) cash and cash items (including receivables), Government securities and securities of other regulated investment companies, and

(ii) other securities for purposes of this calculation limited, except and to the extent provided in subsection (e) [Investment companies furnishing capital to development corporations], in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the taxpayer and to not more than 10 percent of the outstanding voting securities of such issuer, and

(B) not more than 25 percent of the value of its total assets is invested in—

(i) the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer,

(ii) the securities (other than the securities of other regulated investment companies) of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or

You also note that each Trust will issue and redeem Shares of ETMFs in Creation Units through a broker-dealer registered under the Exchange Act acting on an agency basis and serving as each ETMF’s “principal underwriter” as defined in Section 2(a)(29) of the 1940 Act. The number of Shares constituting a Creation Unit will be set by the Adviser. The Trust expects a Creation Unit to consist of a specified number of Shares between 5,000 and 50,000 Shares.

On the basis of your representations and the facts presented in your request, the Commission finds that it is appropriate and in the public interest and consistent with the protection of investors to grant to broker-dealers (other than the Fund’s distributor) that do not create or redeem Shares but engage in transactions in Shares exclusively in the secondary market a conditional exemption under Section 11(d)(1) of the Exchange Act permitting them to extend or maintain or arrange for the extension or maintenance of credit on Shares in connection with such secondary market transactions. In this regard, we note in particular your representation, and we require as a condition of this exemption, that no broker-dealer, directly or indirectly, (1) receives from the Sponsor, any Fund, or any affiliate of such entities, any payment, compensation or other economic incentive to promote or sell Shares (other than non-cash compensation permitted under NASD Rule 2830(l)(5)(A), (B) or (C) (including any successor or replacement FINRA rule to NASD Conduct Rule 2830), or (2) receives from the fund complex⁸ any payment, compensation or other economic incentive to promote or sell Shares to persons outside of the fund complex, other than non-cash compensation permitted under NASD Rule 2830(l)(5)(A), (B), or (C).⁹ Additionally, we note your

similar trades or businesses or related trades or businesses, or

(iii) the securities of one or more qualified publicly traded partnerships. . . .

⁸ For purposes of this order, the term “fund complex” means the issuer of Fund shares, any other issuer of exchange-traded fund shares that holds itself out to investors as a related company for purposes of investment or investor services, any investment adviser, distributor, sponsor, depositor, or trustee (in the case of a unit investment trust) of any such issuer or any “affiliated person” (as defined in the Investment Company Act) of any such issuer or any such investment adviser, distributor, sponsor, depositor or trustee.

⁹ We note that a broker-dealer other than an Authorized Participant that receives some or all of the upfront selling commission from an Authorized Participant would not satisfy this condition and could not, accordingly, rely on the relief granted above.

representation, and require as a condition of this exemption, that such broker-dealers do not extend, maintain or arrange for the extension or maintenance of credit to or for a customer on the Shares before thirty days have elapsed from the date that the Shares initially commenced trading (except to the extent that such extension, maintenance or arranging of credit is otherwise permitted pursuant to Rule 11d1–1). Furthermore, we note that you request relief from Section 11(d)(1) on behalf of ETMFs that will hold twenty or more Portfolio Positions, with no one Portfolio Position constituting 25% or more of the total value of the ETMF, and we require this as a condition of this exemption and the exemption that follows.

In addition, on the basis of your representations and the facts presented, the Commission finds that it is appropriate and in the public interest and consistent with the protection of investors to grant an exemption under Section 11(d)(1) of the Exchange Act to broker-dealers (other than the Fund’s distributor) permitting them to treat Shares, for the purposes of Rule 11d1–2 under the Exchange Act,¹⁰ as “securities issued by a registered . . . unit investment trust as defined in the Investment Company Act of 1940” and thereby extend or maintain or arrange for the extension or maintenance of credit on Shares that have been owned by the persons to whom credit is provided for more than 30 days, in reliance on the exemption contained in the rule.

Moreover, in view of the substantial similarities between the Funds and exchange traded funds and the nature of the assets held in the Funds, the Commission finds that it is appropriate and in the public interest and consistent with the protection of investors to grant an exemption under Section 11(d)(1) of the Exchange Act to an Authorized Participant that extends credit or maintains or arranges for the extension or maintenance of credit on Shares in reliance on the class exemption granted in the Letter re: Derivative Products Committee of the Securities Industry Association (November 21, 2005) (“Class Relief Letter”), provided that the Authorized Participant satisfies conditions 1 and 2 set forth in the Class Relief Letter.¹¹

¹⁰ 17 CFR 240.11d1–2.

¹¹ For purposes of this order, the Shares would be shares of a Qualifying ETF, as defined in the Class Relief Letter, and the fund complex would be a “fund complex,” as defined in the Class Relief Letter. Conditions 1 and 2 of the Class Relief Letter are that: (1) Neither the Authorized Participant, nor

Exchange Act Rule 10b-10

You request relief from Rule 10b-10 on behalf of ETMFs that will hold twenty or more Portfolio Positions, with no one Portfolio Position constituting 25% or more of the total value of the ETMF. These ETMFs will disclose their holdings in full at least once quarterly, with a lag of not more than 60 days, in compliance with the relevant Fund's requirements applicable to open-end investment companies. Rule 10b-10 requires a broker or dealer effecting a transaction in a security for a customer to give or send written notification to such customer disclosing the information specified in paragraph (a) of Rule 10b-10, including the identity, price and number of shares or units (or principal amount) of the security purchased or sold. Each Trust has requested exemptive relief from application of Rule 10b-10 with respect to the creation (*i.e.*, issuance) or redemption of Shares (all of which are in Creation Unit size aggregations). Neither Trust requested exemptive or interpretive relief from Rule 10b-10 in connection with purchases and sales of Shares in the secondary market.

The ETMF proposes that broker-dealers acting for their customers in either depositing Deposit Instruments¹² in exchange for Creation Units or redeeming Shares in Creation Unit size aggregations for Redemption Instruments¹³ be permitted to provide such customers with a statement of the number of Creation Units created or redeemed without providing a statement of the identity, number and price of shares of individual Deposit Instruments included in the Basket tendered to the Trust for purposes of creation of Creation Units, or the identity, number and price of shares of

any natural person associated with such Authorized Participant, directly or indirectly (including through any affiliate of such Authority Participant), receives from the fund complex any payment, compensation or other economic incentive to promote or sell the shares of the exchange-traded fund to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2830(l)(5)(A), (B), or (C); and (2) the Authorized Participant does not extend, maintain or arrange for the extension or maintenance of credit to or for a customer on shares of the exchange-traded fund before thirty days have passed from the date that the ETF's shares initially commence trading (except to the extent that such extension, maintenance or arranging of credit is otherwise permitted pursuant to Exchange Act Rule 11d1-1). "Authorized Participant" has the same meaning in this order as in the Class Relief Letter.

¹² "Deposit Instruments" means the instruments specified by the ETMF for making a purchase of Creation Units of the ETMF.

¹³ "Redemption Instruments" means the instruments that shareholders redeeming Creation Units will receive as specified by the ETMF for meeting a redemption.

Redemption Instruments to be delivered by the Trust to the redeeming holder. Your request notes that you expect a Creation Unit will consist of at least 5,000 Shares. The composition of the Deposit Instruments required to be tendered to the Trust for creation purposes and of the Redemption Instruments to be delivered on redemption will be disseminated on each business day and will be applicable to requests for creations or redemption, as the case may be, on that day. This information will be made available to requesting broker-dealers or other persons through the NSCC. Each Trust anticipates that any institution or broker-dealer engaging in creation or redemption transactions would have done so only with knowledge of the composition of the applicable Deposit Instruments or the Redemption Instruments to be received on redemption, so that specific information on the Deposit Instruments or the Redemption Instruments to be received on redemption in the Rule 10b-10 notification would be redundant.

On the basis of your representations and the facts presented, the Commission finds that it is appropriate and in the public interest and consistent with the protection of investors to grant a limited exemption from Rule 10b-10 to broker-dealers with respect to their confirmation of creation and redemption transactions such that broker-dealers may omit from the confirmation the identity, price, and number of shares of each of the Deposit Instruments or Redemption Instruments tendered or received by the customer in the transaction subject to the following conditions:

(1) Confirmation statements of creation and redemption transactions in Shares will contain all of the information specified in paragraph (a) of Rule 10b-10 other than identity, price, and number of shares of each of the Deposit Instruments or Redemption Instruments tendered or received by the customer in the transaction;

(2) Any confirmation statement of a creation or redemption transaction in Shares that omits the identity, price, or number of shares of component securities will contain a statement that such omitted information will be provided to the customer upon request; and

(3) All such requests will be fulfilled in a timely manner in accordance with paragraph (c) of Rule 10b-10.

Conclusion

It is hereby ordered, pursuant to Rule 101(d) of Regulation M, that the Trusts are exempt from the requirements of

Rules 101 with respect to transactions in the Shares of the Funds as described in the Letter, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Funds to bid for or purchase such Shares during their participation in such distribution as described in the Letter.

It is further ordered, pursuant to Rule 102(e) of Regulation M, that the Trusts are exempt from the requirements of Rule 102 with respect to transaction in the Shares of the Funds as described in the Letter, thus permitting the Funds to redeem Shares of the Funds during the continuous offering of such Shares as described in the Letter.

It is further ordered, pursuant to Rule 10b-17(b)(2), that the Trusts, subject to the conditions contained in this order, are exempt from the requirements of Rule 10b-17 with respect to transactions in the Shares of the Funds as described in the Letter.

This exemption from Rule 10b-17 is subject to the following conditions:

- The Trusts will comply with Rule 10b-17 except for Rule 10b-17(b)(1)(v)(a) and (b); and
- The Trusts will provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

It is further ordered, pursuant to Section 11(d)(1) of the Exchange Act and Rule 11d1-2 thereunder, based on the representations and facts presented in the Letter and subject to the conditions discussed above and below, that broker-dealers (other than the a Fund's distributor) may extend or maintain or arrange for the extension or maintenance of credit on Shares in connection with secondary market transactions; that broker-dealers (other than the Fund's distributor) may treat Shares, for the purposes of Rule 11d1-2 under the Exchange Act, as "securities issued by a registered . . . unit investment trust as defined in the Investment Company Act of 1940" and thereby extend or maintain or arrange for the extension or maintenance of credit on Shares that have been owned by the persons to whom credit is provided for more than 30 days, in reliance on the exemption contained in the rule; and that an Authorized Participant that extends credit or maintains or arranges for the extension or maintenance of credit on Shares may rely on the class exemption granted in the Class Relief Letter, provided that the Authorized Participant satisfies

conditions 1 and 2 set forth in the Class Relief Letter.

It is further ordered, pursuant to Rule 10b-10(f) of the Exchange Act, based on the representations and facts presented in the Letter and subject to the conditions discussed above and below, that broker-dealers may omit from the confirmation of statements of creation and redemption transactions the identity, price, and number of shares of each of the Deposit Instruments or Redemption Instruments tendered or received by the customer.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons relying upon this exemptive relief shall discontinue transactions involving the Shares of the Fund, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on these exemptions. This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Brent J. Fields,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77236; File No. SR-NYSEArca-2016-30]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 7.44P Retail Liquidity Program

February 25, 2016.

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 11, 2016, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 7.44P (Retail Liquidity Program). The proposed rule change is available on the Exchange's Web site at www.nyse.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 those 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 parts of such statements.

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

1. Purpose

The Exchange proposes to amend Rule 7.44P, which governs the Exchange's Retail Liquidity Program (“Program”), to update the expiration date of the pilot period for the Program and to clarify that Retail Orders may not be designated with a minimum trade size (“MTS”).

The pilot period for the Program, which is currently governed by Rule 7.44, is scheduled to expire on March 31, 2016.³ When the Exchange filed for the extension of the Program in September 2015, Rule 7.44P, which will govern the Program when the Exchange implements its Pillar trading platform,

was not yet approved.⁴ The Exchange proposes a non-substantive, technical amendment to Rule 7.44P(m) to update the date when the pilot period for the Program expires from September 30, 2015, which was the prior pilot expiration date, to March 31, 2016, which is the current pilot expiration date.

The Exchange also proposes to amend Rule 7.44P(k) to clarify that Retail Orders may not be designated with an MTS. Both current Rule 7.44(k) and Rule 7.44P(k), which will be operative once symbols begin migrating to the Pillar trading platform, provide for Retail Orders that may be designated with a time-in-force condition of immediate or cancel (“IOC”).⁵ The Exchange does not currently provide for an optional MTS for Limit Orders designated IOC. Accordingly, currently, under Rule 7.44, Retail Orders designated IOC are also not eligible for an MTS.

In Pillar, the Exchange will be implementing a substantive difference under Rule 7.31P (Orders and Modifiers) to allow for an optional MTS for Limit Orders designated IOC.⁶ However, the Exchange does not propose a substantive difference to the Program in Pillar to allow Retail Orders that are designated IOC to be designated with an MTS. Accordingly, the Exchange proposes to clarify Rule 7.44P(k) to specify that Retail Orders may not be designated with an MTS. This proposed clarification does not represent a substantive change to the Program because Retail Orders are not currently permitted to be designated with an MTS. The Exchange proposes this rule change to provide greater specificity that the new MTS functionality available for Limit IOC Orders as described in Rule 7.31P(b)(2)(A) would not be available for Retail Orders in the Program, which is current functionality.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, because it is designed to

⁴ See Securities Exchange Act Release No. 76267 (Oct. 26, 2015), 80 FR 66951 (Oct. 30, 2015) (SR-NYSEArca-2015-56) (“Pillar Approval Order”).

⁵ See NYSE Arca Equities Rules 7.44(k)(1), 7.44(k)(2)(A), 7.44P(k)(1) and 7.44P(k)(2)(A).

⁶ See Pillar Approval Order, *supra* note 4 at 66952. See also NYSE Arca Equities Rule 7.31P(b)(2)(A) (defining “Limit IOC Order” as being eligible for an optional MTS).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See NYSE Arca Equities Rule 7.44(m); see also Securities Exchange Act Release No. 75994 (Sept. 28, 2015), 80 FR 59834 (Oct. 2, 2015) (SR-NYSEArca-2015-84) (Notice of Filing).

¹⁴ 17 CFR 200.30-3(a)(6), (9), (32), and (62).