

the **Federal Register** on March 24, 2017.<sup>4</sup> The Commission received no comments on the proposal.

Section 19(b)(2) of the Act<sup>5</sup> provides that within 45 days of the publication of notice of filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is May 8, 2017.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period to take action on the proposed rule change so that it has sufficient time to consider the Exchange's proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> the Commission designates June 22, 2017 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80615; File No. SR-NYSEArca-2017-24]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Amending Rule 6.80 To Make Permanent a Program That Allows Cabinet Trade Transactions To Take Place at a Price Below \$1 Per Option Contract

May 5, 2017.

#### I. Introduction

On March 2, 2017, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change amending the Exchange's rules to make permanent a program that allows transactions to take place in open outcry trading at prices of at least \$0 but less than \$1 per option contract ("sub-dollar cabinet trades"). The proposed rule change was published for comment in the **Federal Register** on March 23, 2017.<sup>3</sup> On April 25, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission received no comment letters on the proposed rule change. This order provides notice of filing of Amendment No. 1 and approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 80271 (March 17, 2017), 82 FR 14934 (March 23, 2017) ("Notice").

<sup>4</sup> In Amendment No. 1, the Exchange provided supplemental background detail on its proposal, including a summary of why it initially put the program on a pilot, a description of the systems enhancements it made to be able to process cabinet trades in the regular course, an example of how a cabinet trade is done on the trading floor, and a representation that, to its knowledge, neither the Options Clearing Corporation ("OCC") nor the Exchange's members have reported any operational issues in connection with cabinet trades. To promote transparency of its proposed amendment, when NYSE Arca filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 as a comment letter to the file, which the Commission posted on its Web site and placed in the public comment file for SR-NYSEArca-2017-24 (available at <https://www.sec.gov/comments/sr-nysearca-2017-24/nysearca201724.htm>). The Exchange also posted a copy of its Amendment No. 1 on its Web site (<https://www.nyse.com/regulation/rule-filings>) when it filed it with the Commission.

<sup>4</sup> See Securities Exchange Act Release No. 80279 (March 20, 2017), 82 FR 15085 ("Notice").

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

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

## II. Description of the Proposed Rule Change

Prior to 2010, Exchange Rule 6.80 (Accommodation Transactions (Cabinet Trades)) allowed cabinet trade transactions at a price of \$1 per option contract to occur in open outcry trading for certain classes.<sup>5</sup> In 2010, the Exchange amended Rule 6.80 on a pilot basis to allow sub-dollar cabinet trades to take place at prices of at least \$0 but less than \$1 per option contract.<sup>6</sup> The Exchange now proposes to amend Rule 6.80 to make permanent its sub-dollar cabinet trade pilot program, which currently is scheduled to expire on July 5, 2017.<sup>7</sup>

The Exchange permits sub-dollar cabinet trade transactions to be traded pursuant to the same procedures applicable to \$1 cabinet trades, except that for sub-dollar cabinet trades (i) bids and offers for opening transactions are permitted only to accommodate closing transactions, and (ii) transactions in option classes participating in the Penny Pilot Program are permitted.<sup>8</sup> As it explained in the Notice, the Exchange believes that "allowing trading at a price of at least \$0 but less than \$1 better accommodates the closing of options positions in series that are worthless or not actively traded, particularly when there has been a significant move in the price of the underlying security, resulting in a large number of series being out-of-the-money."<sup>9</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<sup>10</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and

<sup>5</sup> See Rule 6.80. See also Notice, *supra* note 3, at 14935 (discussing Rule 6.80).

<sup>6</sup> See Securities Exchange Act Release No. 63476 (December 8, 2010), 75 FR 77930 (December 14, 2010) (SR-NYSEArca-2010-109).

<sup>7</sup> See Commentary .01 to Rule 6.80. See also Securities Exchange Act Release No. 79565 (December 15, 2016), 81 FR 93723 (December 21, 2016) (SR-NYSEArca-2016-163).

<sup>8</sup> See Commentary .01 to Rule 6.80. See also Notice, *supra* note 3, at 14935 (discussing the pilot).

<sup>9</sup> Notice, *supra* note 3, at 14935.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</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>12</sup> 15 U.S.C. 78f(b)(5).

manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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.

In the Notice, as amended, the Exchange explains that it initially put the sub-dollar cabinet trade rule on a pilot so that it could “evaluate the efficacy of the change and to address any operational issues that might arise in processing [c]abinet trades.”<sup>13</sup> During the course of the pilot, the Exchange made enhancements to its system to accommodate cabinet trades at a price as small as \$0.00000001.<sup>14</sup> With that systems change, and based on its experience with these types of trades, the Exchange notes that its systems now “allow it to process [c]abinet trades in a manner similar to how all other trades are processed by the Exchange.”<sup>15</sup>

In support of making the pilot program permanent, the Exchange represents that “there are no operational issues in processing and clearing [c]abinet trades in penny and sub-penny increments.”<sup>16</sup> The Exchange also represents that “OTP Holders and OTP Firms have not raised any concerns with the current method of processing of [c]abinet trades.”<sup>17</sup> Finally, the Exchange represents that it is “not aware of the Options Clearing Corporation (“OCC”) having operational issues with processing [c]abinet trades submitted by the Exchange.”<sup>18</sup>

Based on the representations of the Exchange, the Commission believes that permanent approval of the sub-dollar cabinet trade pilot is consistent with the Act. In particular, the Commission notes that the Exchange has made the necessary systems changes to accommodate sub-dollar cabinet trades into its regular trading infrastructure, and thus is able to process such trades in the normal course. Further, the Exchange has not observed any issues or concerns with sub-dollar cabinet trades

at the Exchange level or with and among its members or in processing the trades through OCC. Accordingly, the Exchange’s rule appears reasonably designed to remove impediments, prevent fraudulent and manipulative acts and practices, and foster cooperation and coordination with persons engaged in facilitating transactions in securities. Further, permanent approval will continue to provide investors with choice when considering a cabinet trade, including the ability to price such trades below \$1 per contract.

#### IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to 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–NYSEArca-2017–24 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–NYSEArca–2017–24. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2017–24, and should be submitted on or before June 1, 2017.

#### V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the amended proposal in the **Federal Register**. In Amendment No. 1, NYSE Arca provided supplemental background detail on why the sub-dollar cabinet trade provision was put on a pilot initially, described the systems changes that the Exchange made to be able to process cabinet trades, and represented its understanding that neither OCC nor the Exchange’s members have reported any operational issues in connection with cabinet trades.<sup>19</sup> The additional information contained in Amendment No. 1 provides further support for the Exchange’s proposal, is consistent with the proposal as initially filed, and does not introduce any new provisions or novel arguments in support of the proposal. Further, the Commission notes that it did not receive any comment letters on the Exchange’s proposal. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change (SR–NYSEArca–2017–24), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

<sup>19</sup> See Amendment No. 1, *supra* note 4. See also *supra* note 4 (noting that the Exchange submitted Amendment No. 1 as a comment letter to the file, which the Commission posted on its Web site and placed in the public comment file).

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> 17 CFR 200.30–3(a)(12).

<sup>13</sup> Amendment No. 1, *supra* note 4.

<sup>14</sup> See *id.*

<sup>15</sup> *Id.* See also Notice, *supra* note 3, at 14935 (noting that “in 2016, there were a total of 558 cabinet trades” on the Exchange. “Of these, 50 trades comprising 47,106 contracts were executed at a price of \$0.01, while the remaining 508 trades comprising 208,078 contracts were executed for a premium of less than \$0.01”).

<sup>16</sup> Notice, *supra* note 3, at 14935.

<sup>17</sup> Amendment No. 1, *supra* note 4.

<sup>18</sup> *Id.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80614; File No. SR-NASDAQ-2017-029]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 2, 3, and 4, to List and Trade Shares of the Gabelli Small Cap Growth Fund and the Gabelli RBI Fund Under Nasdaq Rule 5745

May 5, 2017.

#### I. Introduction

On March 17, 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*”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade common shares (“*Shares*”) of the Gabelli Small Cap Growth NextShares™ (“*Gabelli Small Cap Growth Fund*”) and the Gabelli RBI NextShares™ (“*Gabelli RBI Fund*”) (each, a “*Fund*,” and collectively, the “*Funds*”) under Nasdaq Rule 5745. The proposed rule change was published for comment in the *Federal Register* on March 31, 2017.<sup>3</sup> On April 13, 2017, the Exchange filed Amendment No. 2 to the proposed rule change; on April 24, 2017, the Exchange filed Amendment No. 3 to the proposed rule change; and on May 3, 2017, the Exchange filed Amendment No. 4 to the proposed rule change.<sup>4</sup> The Commission received no

comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment Nos. 2, 3, and 4.

#### II. Exchange’s Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Funds under Nasdaq Rule 5745, which governs the listing and trading of Exchange-Traded Managed Fund Shares, as defined in Nasdaq Rule 5745(c)(1). Each Fund is a series of the Gabelli NextShares™ Trust (“*Trust*”).<sup>5</sup> 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 Funds.<sup>6</sup> Gabelli Funds, LLC (“*Adviser*”) will be the Adviser to the Funds.

regarding the investments of each Fund; (d) modifies the continued listing representations to conform to Nasdaq rules; and (e) makes other technical, non-substantive corrections in the proposed rule change. Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-nasdaq-2017-029/nasdaq2017029-1701356-149968.pdf>. Amendment Nos. 3 to the proposed rule change is a partial amendment in which the Exchange clarifies that, under normal market conditions, the Gabelli RBI Fund invests primarily in equity securities, such as common stock, of domestic and foreign services and equipment companies focused on physical asset development, including roads, bridges, and infrastructure (RBI). Amendment No. 3 is available at: <https://www.sec.gov/comments/sr-nasdaq-2017-029/nasdaq2017029-1717445-150417.pdf>. Amendment No. 4 to the proposed rule change is a partial amendment in which the Exchange clarifies that the Reporting Authority (as defined in Nasdaq Rule 5745) will implement and maintain, or ensure that the Composition File (as defined in Nasdaq Rule 5745) 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. Amendment No. 4 is available at: <https://www.sec.gov/comments/sr-nasdaq-2017-029/nasdaq2017029-1734987-150973.pdf>. Because Amendment Nos. 2, 3, and 4 to the proposed rule change do not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment Nos. 2, 3, and 4 are not subject to notice and comment.

<sup>5</sup> According to the Exchange, the Commission has issued an order granting the Trust and certain affiliates of the Trust exemptive relief under the Investment Company Act of 1940 (“*1940 Act*”). See Investment Company Act Release No. 31608 (May 19, 2015) (File No. 812-14438). The Exchange represents that, in compliance with Nasdaq Rule 5745(b)(5), which applies to Shares based on an international or global portfolio, the Trust’s application for exemptive relief under the 1940 Act states that the Trust will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933, as amended.

<sup>6</sup> See Registration Statement on Form N-1A for the Trust dated March 14, 2017 (File Nos. 333-211881 and 811-23160).

G.distributors, LLC, will be the principal underwriter and distributor of the Funds’ Shares. The Bank of New York Mellon will act as custodian and transfer agent. BNY Mellon Investment Servicing (US) Inc. will act as the sub-administrator to the Funds. Interactive Data Pricing and Reference Data, Inc. will calculate the Intraday Indicative Value (as described below) for the Funds.

The Exchange has made the following representations and statements in describing the Funds.<sup>7</sup> According to the Exchange, each Fund will be actively managed and will pursue the various principal investment strategies described below.<sup>8</sup>

#### A. Principal Investment Strategies

##### 1. The Gabelli Small Cap Growth Fund

The Gabelli Small Cap Growth Fund seeks to provide a high level of capital appreciation. Under normal market conditions, the Gabelli Small Cap Growth Fund invests at least 80% of its net assets, plus borrowings for investment purposes, in equity securities of companies that are considered to be small companies at the time the Gabelli Small Cap Growth Fund makes its investment. The Gabelli Small Cap Growth Fund invests primarily in the common stocks of companies, which the Adviser believes are likely to have rapid growth in revenues and above average rates of earnings growth. The Adviser currently characterizes small companies for the Gabelli Small Cap Growth Fund as those with total common stock market values of \$3 billion or less at the time of investment.

##### 2. The Gabelli RBI Fund

The Gabelli RBI Fund seeks to provide above average capital appreciation. Under normal market conditions, the Gabelli RBI Fund primarily invests in equity securities, such as common stock, of domestic and foreign services and equipment companies focused on physical asset development, including roads, bridges, and infrastructure (RBI). The Adviser

<sup>7</sup> The Commission notes that additional information regarding the Trust, the Funds, and the Shares, including investment strategies, risks, creation and redemption procedures, calculation of net asset value (“*NAV*”), fees, distributions, and taxes, among other things, can be found in the Notice, Amendment Nos. 2, 3, and 4, and Registration Statement, as applicable. See *supra* notes 3, 4, and 6, respectively, and accompanying text.

<sup>8</sup> According to the Exchange, additional information regarding the Funds will be available on one of two free public Web sites ([www.gabelli.com](http://www.gabelli.com) or [www.nextshares.com](http://www.nextshares.com)), as well as in the Registration Statement for the Funds.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 80315 (March 27, 2017), 82 FR 16075 (“*Notice*”).

<sup>4</sup> On April 11, 2017, the Exchange filed Amendment No. 1 to the proposed rule change and, on April 13, 2017, the Exchange withdrew Amendment No. 1. Amendment No. 2 to the proposed rule change replaces and supersedes the original filing in its entirety. In Amendment No. 2, the Exchange: (a) Represents that the Adviser will maintain a fire wall with respect to its affiliated broker-dealer regarding access to information concerning the composition of, and/or changes to, each Fund’s portfolio; (b) represents that personnel who make decisions on each Fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding each Fund’s portfolio; (c) provides additional detail