

within 60 days of the date of the Permanent Order or, with respect to condition 4, such later date as may be contemplated by the Plea Agreement, the Deferred Prosecution Agreement, the CFTC Order, the FCA Final Notice, and the DFS Order.

4. The Settling Firm will comply in all material respects with the material terms and conditions of the Plea Agreement, and DB AG will comply in all material respects with the material terms and undertakings of the Deferred Prosecution Agreement, the CFTC Order, the FCA Final Notice, and the DFS Order.

5. Applicants will provide written notification to the Chief Counsel of the Commission's Division of Investment Management with a copy to the Chief Counsel of the Commission's Division of Enforcement of a material violation of the terms and conditions of the Orders within 30 days of discovery of the material violation.

#### Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

*It is hereby ordered*, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Judgment, subject to the representations and conditions in the application, from April 23, 2015, until the date the Commission takes final action on their application for a permanent order.

By the Commission.

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31575; 812-14438]

### Gabelli ETMF Trust, et al.; Notice of Application

April 23, 2015.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an

exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

*Applicants:* Gabelli ETMF Trust (the "Trust"), Gabelli Funds, LLC (the "Adviser") and G.distributors, LLC (the "Distributor").

*Summary of Application:* Applicants request an order ("Order") that permits: (a) Actively managed series of certain open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at the next-determined net asset value plus or minus a market-determined premium or discount that may vary during the trading day; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to create and redeem Shares in kind in a master-feeder structure. The Order would incorporate by reference terms and conditions of a previous order granting the same relief sought by applicants, as that order may be amended from time to time ("Reference Order").<sup>1</sup>

*Filing Dates:* The application was filed on March 30, 2015.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 18, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a

hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** The Commission: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants: One Corporate Center, Rye, NY 10580-1422.

**FOR FURTHER INFORMATION CONTACT:** Jean E. Minarick, Senior Counsel, or Daniele Marchesani, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

#### Applicants

1. The Trust will be registered as an open-end management investment company under the Act and is a statutory trust organized under the laws of Delaware. Applicants seek relief with respect to seven Funds (as defined below, and those Funds, the "Initial Funds"). The portfolio positions of each Fund will consist of securities and other assets selected and managed by its Adviser or Subadviser (as defined below) to pursue the Fund's investment objective.

2. The Adviser, a New York limited liability company, will be the investment adviser to the Initial Funds. An Adviser (as defined below) will serve as investment adviser to each Fund. The Adviser is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Adviser may retain one or more subadvisers (each a "Subadviser") to manage the portfolios of the Funds. Any Subadviser will be registered, or not subject to registration, under the Advisers Act.

3. The Distributor is a Delaware limited liability company and a broker-dealer registered under the Securities Exchange Act of 1934 and will act as the principal underwriter of Shares of the Funds. Applicants request that the requested relief apply to any distributor of Shares, whether affiliated or unaffiliated with the Adviser (included in the term "Distributor"). Any Distributor will comply with the terms and conditions of the Order.

#### Applicants' Requested Exemptive Relief

4. Applicants seek the requested Order under section 6(c) of the Act for

<sup>1</sup> Eaton Vance Management, et al., Investment Company Act Rel. Nos. 31333 (Nov. 6, 2014) (notice) and 31361 (Dec. 2, 2014) (order).

an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act. The requested Order would permit applicants to offer exchange-traded managed funds. Because the relief requested is the same as the relief granted by the Commission under the Reference Order and because the Adviser has entered into, or anticipates entering into, a licensing agreement with Eaton Vance Management, or an affiliate thereof in order to offer exchange-traded managed funds,<sup>2</sup> the Order would incorporate by reference the terms and conditions of the Reference Order.

5. Applicants request that the Order apply to the Initial Funds and to any other existing or future open-end management investment company or series thereof that: (a) is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser (any such entity included in the term "Adviser"); and (b) operates as an exchange-traded managed fund as described in the Reference Order; and (c) complies with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference herein (each such company or series and Initial Fund, a "Fund").<sup>3</sup>

6. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment

<sup>2</sup> Eaton Vance Management has obtained patents with respect to certain aspects of the Funds' method of operation as exchange-traded managed funds.

<sup>3</sup> All entities that currently intend to rely on the Order are named as applicants. Any other entity that relies on the Order in the future will comply with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference herein.

company and the general purposes of the Act. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

7. Applicants submit that for the reasons stated in the Reference Order: (1) With respect to the relief requested pursuant to section 6(c) of the Act, the relief is appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act; (2) with respect to the relief request pursuant to section 17(b) of the Act, the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned, are consistent with the policies of each registered investment company concerned and consistent with the general purposes of the Act; and (3) with respect to the relief requested pursuant to section 12(d)(1)(f) of the Act, the relief is consistent with the public interest and the protection of investors.

By the Division of Investment Management, pursuant to delegated authority.

**Brent J. Fields,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74797; File No. SR-NASDAQ-2015-036]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendments Nos. 1 and 2 Thereto, Relating to the Listing and Trading of the Shares of 18 Eaton Vance NextShares ETFs of Either the Eaton Vance ETF Trust or the Eaton Vance ETF Trust II

April 23, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on April 10, 2015, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have

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

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

been prepared by the Exchange. On April 21, 2015, the Exchange filed Amendments Nos. 1 and 2 to the proposal.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendments Nos. 1 and 2 thereto, from interested persons.

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

Nasdaq proposes to list and trade under Nasdaq Rule 5745 (Exchange-Traded Managed Fund Shares) the common shares ("Shares") of the below-listed exchange-traded managed funds (each, a "Fund," and collectively, the "Funds"):

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 TABS 5-to-15 Year Laddered Municipal Bond 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™

Each Fund is a series of either Eaton Vance ETF Trust or Eaton Vance ETF Trust II (each, a "Trust," and together, the "Trusts"). The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at Nasdaq's principal office, and at the Commission's Public Reference Room.

<sup>3</sup> Amendment No. 1 amended and replaced the proposed rule change in its entirety. Amendment No. 2 subsequently amended the proposal to include a new footnote to reflect a Web site reference.