



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

November 20, 2018

Adam Teufel
Dechert LLP
1900 K Street, NW
Washington, DC 20006-1110

Re: Request for Exemptive, Interpretive or No-Action Relief regarding Rules 15c1-5 and 15c1-6 promulgated under the Securities Exchange Act of 1934 for Brandes Investment Trust

Dear Mr. Teufel:

In your letter dated November 20, 2018, Brandes Investment Trust, a Delaware statutory trust (the "Trust"), and Brandes Investment Partners, L.P., an registered investment adviser (the "Adviser"), requested exemptive, interpretive or no-action relief on behalf of itself, broker-dealers that execute creation or redemption transactions in Shares, its series, Brandes Value NextShares, as well as in Shares of any future exchange traded managed fund that is a series of the Trust or another registered open-end management investment company advised by the Adviser (the "NextShares Funds"). Specifically, the letter requested that the Securities and Exchange Commission (the "Commission") grant exemptive, interpretive or no-action relief from Rules 15c1-5 and 15c1-6 of the Securities Exchange Act of 1934 (the "Exchange Act"). This letter responds to your request. We have enclosed a photocopy of your letter. Each defined term in this letter has the same meaning as defined in your letter, unless we note otherwise.

In your letter, you represented that the NextShares Funds will issue and redeem Shares in Creation Units. Subject to certain exceptions described in your letter, Creation Units of the NextShares Funds will be purchased by making a deposit of the instruments specified by the applicable NextShares Fund for making a purchase ("Deposit Instruments"), and shareholders redeeming Creation Units will receive a transfer of instruments specified by the applicable NextShares Fund for meeting a redemption ("Redemption Instruments"). On any given business day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments are expected to be identical and are referred to herein as the "Basket." Deposit Instruments and Redemption Instruments may include cash, securities and/or other transferable investment assets. To the

extent there is a difference between the net asset value (“NAV”) of a Creation Unit and the aggregate market value of the Basket exchanged for the Creation Unit, the party conveying the lower value will pay to the other an amount in cash equal to that difference (the “Balancing Amount”).

To preserve the confidentiality of the applicable NextShares Fund’s trading activities, each Trust anticipates that the Basket will normally not be a pro rata slice of the positions in the NextShares Fund portfolio (“Portfolio Positions”). Rather, instruments being acquired by the registered investment adviser managing a NextShares Fund portfolio will generally be excluded from the Basket until their purchase is completed, and instruments being sold may not be removed from the Basket until the sale program is completed. Further, when deemed by the Adviser to be in the best interest of a NextShares Fund and its shareholders, other Portfolio Positions may be excluded from the Basket. Whenever Portfolio Positions are excluded from the Basket, the Basket may include proportionately more cash than is in the portfolio, with such additional cash substituting for the excluded Portfolio Positions.

You note that the NextShares Funds may permit an Authorized Participant to deposit or receive, as applicable, cash in lieu of some or all of the Basket instruments, solely because: (a) such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (b) such instruments are not eligible for trading by the Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (c) a holder of Shares of the NextShares Fund investing in foreign instruments would be subject to unfavorable income tax treatment if the holder received redemption proceeds in kind. No other Basket substitutions will be permitted.

You state that, although it normally issues and redeems Creation Units in kind, a NextShares Fund may require purchases and redemptions to be made entirely on a cash basis. In such an instance, the NextShares Fund will announce, before the open of trading on a given business day, that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash. The NextShares Fund may also determine, upon receiving a purchase or redemption order from an Authorized Participant, to require the purchase or redemption, as applicable, to be made entirely in cash.

You also note that each business day, before the open of trading on the listing Exchange, the Adviser will cause the Basket, including the names and quantities of the securities and other instruments in the Basket and the estimated Balancing Amount, for that day to be disseminated through the National Securities Clearing Corporation, a clearing agency registered with the Commission and affiliated with the Depository Trust Company. The published Basket will apply until a new Basket is announced, and there will be no intra-day changes to the Basket except to correct errors in the published Basket. The Adviser will also make available on a daily basis information about the previous day’s Balancing Amount.

The Commission also notes the composite nature of the NextShares Fund shares as representing interests in a wide range of securities, which securities are generally reflected in a creation or redemption Basket. You note that the NextShares Funds will adopt fundamental policies consistent with the 1940 Act and be classified as “diversified” or “non-diversified”

under the 1940 Act. Additionally, you represent that the NextShares Funds intends to maintain the required level of diversification, and otherwise conduct its operations, so as to meet the regulated investment company diversification requirements of the Internal Revenue Code of 1986, as amended. Furthermore, you represent that the NextShares Fund will hold twenty or more Portfolio Positions, with no one Portfolio Position constituting 25% or more of the total value of the NextShares Fund.

Response:

Primarily because of the composite nature of shares of the NextShares Funds and the relatively small proportionate share of any Portfolio Position in a NextShares Fund, the staff will not recommend enforcement action to the Commission under Rule 15c1-5 if a broker-dealer executes creation or redemption transactions in shares of a NextShares Fund without disclosing any control relationship with an issuer of a Portfolio Position. Moreover, the staff will not recommend that the Commission take enforcement action under Rule 15c1-6 if a broker-dealer executes creation or redemption transactions in shares of a NextShares Fund without disclosing its participation or interest in a primary or secondary distribution of a Portfolio Position.

You note in your letter that that the no-action relief you are seeking with respect to Rules 15c1-5 and 15c1-6 is necessary for transactions in creation and redemption transactions. You have not requested, and we are not issuing, similar relief for secondary market transactions.

The foregoing no-action positions taken under Rules 15c1-5, and 15c1-6 under the Exchange Act are based solely on your representations and the facts presented to the staff, and are strictly limited to the application of those to transactions involving the shares of a NextShares Fund under the circumstances described above and in your letter. Any different facts or representations may require a different response. We express no view with respect to other questions the proposed activities may raise, including the applicability of any other federal or state laws or the applicability of self-regulatory organization rules. This position is subject to modification or revocation in the future. Please note that, as a matter of policy, the staff grants no action relief only prospectively, not retroactively.

In addition, your attention is directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, including 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 participants in the various transactions.

Sincerely,



Joanne Rutkowski
Assistant Chief Counsel

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**Securities Exchange Act of 1934
Rules 15c1-5 and 15c1-6**

November 20, 2018

Ms. Natasha Greiner
Acting Chief Counsel
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2000

Re: Request for Exemptive, Interpretive or No-Action Relief from Rules 15c1-5 and 15c1-6 under the Securities Exchange Act of 1934 for Brandes Investment Trust

Dear Ms. Greiner:

We are writing on behalf of Brandes Investment Trust (the "Trust"), a Delaware statutory trust registered as an open-end management investment company under the Investment Company Act of 1940, as amended ("1940 Act"), and Brandes Investment Partners, L.P. (the "Adviser"), an investment adviser registered under the Investment Advisers Act of 1940. The Trust and Adviser request exemptive, interpretive or no-action relief under the Securities Exchange Act of 1934 (the "Exchange Act") on behalf of themselves, broker-dealers that execute creation and redemption transactions in Shares (as defined below), and the Trust's series, Brandes Value NextShares, as well as in Shares of any future exchange traded managed fund that is a series of the Trust or another registered open-end management investment company advised by the Adviser (the "NextShares Funds"). The relief is necessary for creation and redemption transactions as described herein and

would not apply to secondary market transactions. The NextShares Funds will operate as exchange-traded managed funds (“ETMFs”), as described below.¹

The Trust, on behalf of itself, the NextShares Funds, and broker-dealers engaging in creation and redemption transactions in shares issued by the NextShares Funds (“Shares”), as the case may be, requests that the U.S. Securities and Exchange Commission (the “Commission” or the “SEC”) grant exemptive, interpretive or no-action relief from Rules 15c1-5 and 15c1-6 under the Exchange Act in connection with the creation or redemption of Creation Units, as discussed below.

The NextShares Funds will continuously issue and redeem Shares in specified aggregations (each aggregation of Shares, a “Creation Unit”) at net asset value (“NAV”). Each NextShares Fund has filed or will file a registration statement on Form N-1A, and the Shares will be listed on a national securities exchange or national securities association (each such market, an “Exchange”) and will trade in the secondary market.² The NextShares Funds will be overseen by a board of trustees (the “Board”) which will maintain the composition requirements of Section 10 of the 1940 Act. The NextShares Funds will be actively managed by an investment adviser registered under the Investment Advisers Act of 1940, as amended. The NextShares Funds will adopt fundamental

¹ The Brandes Value NextShares (the “Fund”) commenced operations on February 14, 2018. To the best of the Trust’s and Adviser’s knowledge and belief, none of the Trust, the Fund, or the broker-dealers engaging in creation or redemption transactions in Creation Units (as defined below) of the Fund have engaged in a creation or redemption transaction to date in contravention of Rule 15c1-5 or Rule 15c1-6 under the Exchange Act because (i) the sole broker-dealer currently authorized to engage in creation or redemption transactions with the Fund has made that representation to the Adviser with respect to all creation transactions to date and (ii) the Fund has not processed a redemption transaction to date.

² The Commission has approved Nasdaq Rule 5745 governing the listing and trading of Shares. *See* Exchange Act Release No. 73562 (Nov. 7, 2014).

policies consistent with the 1940 Act and be classified as “diversified” or “non-diversified” under the 1940 Act. Additionally, the NextShares Funds intend to maintain the required level of diversification, and otherwise conduct their operations, so as to meet the regulated investment company diversification requirements of the Internal Revenue Code of 1986, as amended.³ The NextShares Funds will hold twenty or more positions in its portfolio (“Portfolio Positions”), with no one Portfolio Position constituting 25% or more of the total value of the NextShares Funds.

The NextShares Funds’ shares will be listed for trading on an Exchange, and trade thereon at prices that are directly linked to the respective NextShares Fund’s next end-of-day NAV (“NAV-

³ 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 similar trades or businesses or related trades or businesses, or
 - (iii) the securities of one or more qualified publicly traded partnerships....

Based Trading”). In NAV-Based Trading, all trades are executed at the next NAV, plus or minus a trading cost (*i.e.*, a premium or discount to NAV) determined at the time of trade execution. For each trade, the final transaction price is determined once NAV is computed. Buyers will not know the value of their purchases and sales until the end of the trading day. Please see “Buying and Selling Shares on the Exchange” below for additional information.

The SEC staff (“Staff”) has previously issued relief substantially similar to that requested herein to other ETMFs listed and traded on an Exchange that meet certain conditions.⁴ In addition, the Staff has previously issued relief similar to that requested herein to certain actively managed exchange-traded funds (“ETFs”) listed and traded on an Exchange that meet certain conditions.⁵ The Trust does not believe that the relief requested raises any significant new regulatory issues.

I. The NextShares Funds

The Trust currently offers the following NextShares Fund that would be subject to the requested relief:⁶

⁴ See Letter from Heather Seidel to Eaton Vance Management regarding Eaton Vance NextShares Trust and Eaton Vance NextShares Trust II dated February 26, 2016. See also Letter from Heather Seidel regarding Calvert Management Series dated December 21, 2017 and Letter from Heather Seidel regarding Hartford Funds NextShares Trust dated December 21, 2017.

⁵ See, e.g., Letter from Josephine J. Tao to Foley & Lardner LLP regarding Bear Stearns Active ETF Trust, dated March 24, 2008; Letter from James A. Brigagliano to Clifford Chance US LLP regarding PowerShares Actively Managed ETF Trust, dated April 4, 2008; Letter from Josephine Tao to Wisdom Tree Trust, dated May 8, 2008 (“WisdomTree Letter”). In the WisdomTree Letter, the Staff stated that, having repeatedly expressed its views on, among other things, Rules 15c1-5 and 15c1-6 with respect to actively managed ETFs, it would not respond to additional requests for relief from those provisions unless the ETFs presented novel or unusual issues.

⁶ The Trust will operate the NextShares Funds pursuant to an exemptive order issued by the Commission under the 1940 Act. See Investment Company Act Rel. No. 32925 (November 28, 2017).

Brandes Value NextShares

The investment objective of the Brandes Value NextShares is to seek long-term capital appreciation by investing primarily in equity securities of U.S. companies. Equity securities include common and preferred stocks, warrants, and rights. While Brandes Value NextShares may purchase equity securities issued by companies of any size, it typically focuses its investments on large-capitalization equity securities.

II. NextShares Funds Operations Sales and Redemptions of Creation Units

The NextShares Funds will issue and redeem Shares in Creation Units through a broker-dealer registered under the Exchange Act (the “Distributor”) acting on an agency basis and serving as the NextShares Funds’ “principal underwriter” as defined in Section 2(a)(29) of the 1940 Act.⁷ Subject to certain exceptions described below, Creation Units of the NextShares Funds will be purchased by making a deposit of the instruments specified by the applicable NextShares Fund for making a purchase (“Deposit Instruments”), and shareholders redeeming Creation Units will receive a transfer of instruments specified by the applicable NextShares Fund for meeting a redemption (“Redemption Instruments”).⁸ On any given business day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments are expected to be identical and are referred

⁷ The number of Shares constituting a Creation Unit will be set by the Adviser. The NextShares Funds expect a Creation Unit to consist of a specified number of 5,000 to 50,000 Shares. The anticipated Creation Unit size is somewhat smaller than customary for ETFs and should support secondary market trading efficiency by facilitating tighter market maker inventory management.

⁸ Creation Units of Shares will be redeemable at the next determined NAV of the NextShares Fund on each business day in accordance with the 1940 Act.

to herein as the “Basket.” Deposit Instruments and Redemption Instruments may include cash, securities and/or other transferable investment assets. To the extent there is a difference between the NAV of a Creation Unit and the aggregate market value of the Basket exchanged for the Creation Unit, the party conveying the lower value will pay to the other an amount in cash equal to that difference (the “Balancing Amount”).

To preserve the confidentiality of the NextShares Funds’ trading activities, the Trust anticipates that the Basket will normally not be *a pro rata* slice of the Portfolio Positions. Rather, instruments being acquired by the Adviser for a NextShares Fund’s portfolio will generally be excluded from the Basket until their purchase is completed, and instruments being sold may not be removed from the Basket until the sale program is completed. Further, when deemed by the Adviser to be in the best interest of a NextShares Fund and its shareholders, other Portfolio Positions may be excluded from the Basket. Whenever Portfolio Positions are excluded from the Basket, the Basket may include proportionately more cash than is in the portfolio, with such additional cash substituting for the excluded Portfolio Positions.

The NextShares Funds may permit an Authorized Participant (as defined below) to deposit or receive, as applicable, cash in lieu of some or all of the Basket instruments, solely because: (a) such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (b) such instruments are not eligible for trading by the Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (c) a holder of Shares of the NextShares Fund investing in foreign instruments would be subject to unfavorable income tax treatment if the holder received redemption proceeds in kind. No other Basket substitutions will be permitted.

In addition, although the NextShares Funds may normally issue and redeem Creation Units in kind, each NextShares Fund may also require purchases and redemptions to be made entirely on a cash basis. In such an instance, the NextShares Fund will announce, before the open of trading on a given business day, that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash. The NextShares Funds may also determine, upon receiving a purchase or redemption order from an Authorized Participant, to require the purchase or redemption, as applicable, to be made entirely in cash.

Each business day, before the open of trading on the listing Exchange, the Adviser will cause the Basket, including the names and quantities of the securities and other instruments in the Basket and the estimated Balancing Amount, for that day to be disseminated through the National Securities Clearing Corporation (“NSCC”), a clearing agency registered with the Commission and affiliated with the Depository Trust Company (“DTC”). The published Basket will apply until a new Basket is announced, and there will be no intra-day changes to the Basket except to correct errors in the published Basket. The Adviser will also make available on a daily basis information about the previous day’s Balancing Amount.

All orders to purchase or redeem Creation Units must be placed with the Distributor by or through an “Authorized Participant,” which is either: (a) a “participating party” (*i.e.*, a broker or other participant in the Continuous Net Settlement (“CNS”) System of the NSCC) or (b) a DTC participant (“DTC Participant”), which in any case has executed an agreement with the Distributor (“Participant Agreement”). An investor does not have to be an Authorized Participant to transact in Creation Units, but must place an order through and make appropriate arrangements with an Authorized Participant.

Transaction Fees

Purchasers and redeemers of Creation Units will be charged a transaction fee to cover the estimated cost to the NextShares Fund of processing the purchase or redemption, including costs charged to it by NSCC or DTC, and the estimated transaction costs (*i.e.*, brokerage commissions, bid-ask spread and market impact trading costs) incurred in converting the Basket to or from the desired portfolio composition.⁹ The transaction fee will be determined daily and will be limited to amounts approved by the NextShares Funds' Board and determined by the Adviser to be appropriate to defray the estimated expenses that the NextShares Fund incurs in connection with the purchase or redemption. The NextShares Funds' transaction fees will be available on the NextShares Funds' website each day. The purpose of transaction fees is to protect the NextShares Fund's existing shareholders from the dilutive costs associated with the purchase and redemption of Creation Units. The amount of transaction fees may vary over time for a NextShares Fund depending on the estimated trading costs for its portfolio positions and Basket, processing costs and other considerations. Transaction fees may include fixed amounts per creation or redemption event, amounts varying with the number of Creation Units purchased or redeemed, and amounts varying based on the time an order is placed. If a NextShares Fund substitutes cash for Basket instruments it may impose higher transaction fees on the substituted cash amount. Higher transaction fees may apply to purchases and redemptions through DTC than through the NSCC.

⁹ In all cases, transaction fees will be limited in accordance with the requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

Intraday Indicative Values

The Trust will arrange for the continuous calculation by an independent third party and publication through the NASDAQ OMX Global Index Data Service throughout the regular trading session of the listing Exchange (generally 9:30 a.m. to 4:00 p.m. ET) each business day of an intraday indicative value (“IIV”) of each NextShares Fund’s Shares.¹⁰ IIVs will be disseminated by one or more major market data vendors at intervals of not more than 15 minutes during trading on an Exchange.¹¹ The sole purpose of IIVs in the context of the NextShares Funds is to help investors determine the number of Shares to buy or sell if they want to transact in an approximate dollar amount (*i.e.*, if an investor wants to acquire approximately \$5,000 of a NextShares Fund, how many Shares should the investor buy?).¹²

¹⁰ Neither the Trust nor the NextShares Fund will be involved in, or responsible for, the calculation or dissemination of any such IIV and will make no warranty as to its accuracy.

¹¹ Unlike for ETFs, which arrange for IIVs to be disseminated every 15 seconds, IIVs for the NextShares 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 a NextShares Fund’s portfolio and the price at which Shares are currently trading. In NAV-Based Trading, the secondary market premium/discount that applies to the NextShares Funds is always fully transparent and does not depend on dissemination of IIVs.

¹² Because IIVs will generally differ from end-of-day NAV, they cannot be used to calculate with precision the dollar value of a prescribed number of Shares to be bought or sold. Especially during periods of volatile market conditions and for transactions executed early in the trading day, buyers and sellers of the NextShares Fund face the risk that the value of their purchases and sales may differ materially from intended levels. To seek to ensure that the NextShares Funds’ investors understand the risk that the value of their purchases and sales may differ from intended levels, the NextShares Funds’ registration statement, website, and advertising and marketing materials will include prominent disclosure of this risk. In addition, when a retail NextShares Fund order is submitted electronically, the investor will receive a prompt reminding the investor of the contingent pricing nature of Shares and the other principal distinctions of investing in the NextShares Fund, and will be required to acknowledge that he or she has read and understood this information before the order is finalized.

Portfolio Holdings Disclosure

The NextShares Funds will not make their full Portfolio Positions available on a daily basis. Instead, the NextShares Funds will disclose their holdings only at periodic intervals, and with a lag. The NextShares Funds will disclose their holdings in full at least once quarterly, with a lag of not more than 60 days, in compliance with the requirements applicable to open-end investment companies. As a matter of practice, many mutual funds provide public disclosure of their holdings more frequently, and on a more timely basis (such as monthly with a 30-day lag). The disclosure practices of the NextShares Funds are expected to be similar to those of mutual funds holding similar types of investments.

The mechanism that connects trading prices of Shares to NAV in NAV-Based Trading does not require contemporaneous disclosure of Portfolio Positions to function effectively, as described below. Because disclosing holdings in real-time can facilitate front-running of portfolio trades and enable copycat investors to replicate a fund's portfolio positioning, active managers have to date largely avoided the transparent active ETF model. By removing the requirement for portfolio transparency, ETMFs have the potential to provide investors with access to a broad range of active strategies.

Buying and Selling Shares on the Exchange

Shares will be purchased and sold in the secondary market at prices based on the next-determined NAV. All bids, offers and execution prices will be expressed as a premium/discount (which may be zero) to the NextShares Fund's next-determined NAV (*e.g.*, NAV-\$0.01, NAV+\$0.01). The NextShares Funds' NAVs will be determined each business day, normally as of

4:00 p.m. Eastern Time. Trade executions will be binding at the time orders are matched on the Exchange's facilities, with the transaction prices contingent upon the determination of NAV.

- *Trading Premiums and Discounts.* Bid and offer prices for Shares will be quoted throughout the day relative to NAV. The premium or discount to NAV at which Share prices are quoted and transactions are executed will vary depending on market factors, including the balance of supply and demand for Shares among investors, transaction fees and other costs in connection with creating and redeeming Creation Units of Shares, the cost and availability of borrowing Shares, competition among market makers, the Share inventory positions and inventory strategies of market makers and other market participants, the profitability requirements and business objectives of market makers, and the volume of Share trading. Reflecting such market factors, prices for Shares in the secondary market may be above, at or below NAV.

- *Transmitting and Processing Orders.* Member firms will utilize existing order types and interfaces to transmit Share bids and offers to the Exchange, which will process Share trades like trades in shares of conventional ETFs and other listed securities. In the systems used to transmit and process transactions in Shares, each NextShares Fund's next-determined NAV will be represented by a proxy price (*e.g.*, 100.00) and a premium/discount of a stated amount to the next-determined NAV to be represented by the same increment/decrement from the proxy price used to denote NAV (*e.g.*, NAV-\$0.01 would be represented as 99.99; NAV+\$0.01 as 100.01). At the start of each trading day, the price will be reset to the proxy price.

To avoid potential investor confusion, the listing Exchange will work with member firms and providers of market data services to seek to ensure that representations of intraday bids, offers and execution prices for the NextShares Funds that are made available to the investing public follow

the “NAV- $\$0.01$ /NAV+ $\$0.01$ ” (or similar) display format, rather than displaying proxy prices. Each NextShares Fund will have a unique identifier associated with its ticker symbol, which will indicate that its Shares are traded using NAV-Based Trading. The listing Exchange makes available to member firms and market data services certain proprietary data feeds (“Exchange Data Feeds”) that are designed to supplement the market information disseminated through the consolidated tape (“Consolidated Tape”). The Exchange will use an Exchange Data Feed to disseminate intraday price and quote data for the NextShares Funds in real time in the “NAV- $\$0.01$ /NAV+ $\$0.01$ ” (or similar) display format. Member firms could use the Exchange Data Feed to source intraday NextShares Fund prices for presentation to the investing public in the “NAV- $\$0.01$ /NAV+ $\$0.01$ ” (or similar) display format. Alternatively, member firms could source intraday NextShares Fund prices in proxy price format from the Consolidated Tape and use a simple algorithm to convert prices into the “NAV- $\$0.01$ /NAV+ $\$0.01$ ” (or similar) display format.

- *Intraday Reporting of Quotes and Trades.* All bids and offers for Shares and all Share trade executions will be reported intraday in real time by the Exchange to the Consolidated Tape¹³ and separately disseminated to member firms and market data services through an Exchange Data Feed. The Exchange will also provide the member firms participating in each Share

¹³ Due to systems limitations, the Consolidated Tape will report intraday execution prices and quotes for the NextShares Funds using a proxy price format. As noted, 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 the NextShares Funds that are made available to the investing public follow the same display format.

trade with a contemporaneous notice of trade execution, indicating the number of Shares bought or sold and the executed premium/discount to NAV.¹⁴

- *Final Trade Pricing, Reporting and Settlement.* All executed Share trades will be recorded and stored intraday by the Exchange to await the calculation of the NextShares Funds' end-of-day NAVs and the determination of final trade pricing. After the NextShares Funds' NAVs are calculated and provided to the Exchange, the Exchange will price each Share trade entered into during the day at the applicable NextShares Fund's NAV plus/minus the trade's executed premium/discount. Using the final trade price, each executed Share trade will then be disseminated to member firms and market data services through the Exchange Data Feed used to report Share trades, and confirmed to the member firms participating in the trade to supplement the previously provided information to include final pricing. After the pricing is finalized, the Exchange will deliver the Share trading data to NSCC for clearance and settlement, following the same processes used for the clearance and settlement of trades in conventional ETFs and other exchange-traded securities.

Trading Efficiency

In NAV-Based Trading, a market maker assumes no intraday market risk in connection with its Share inventory positions because all Share transaction prices are based on the next-determined NAV. Whether the NextShares Funds' underlying values go up or down over the course of a trading day will not affect how much a market maker earns by selling (or buying) Shares in the market at a net premium (discount) to NAV, and then purchasing (redeeming) an offsetting

¹⁴ All orders to buy or sell Shares that are not executed on the day the order is submitted will be automatically cancelled as of the close of trading on such day.

number of Shares at the end of the day in transactions with the applicable NextShares Fund. No intraday market risk means no requirement for intraday hedging, and therefore no associated requirement for portfolio holdings disclosure to maintain a tight relationship between Share trading prices and NAV.

A market maker that purchases (or redeems) a Creation Unit at the end of a trading day to offset its net intraday sales (purchases) of a Creation Unit quantity of Shares will earn profits to the extent that it either sells (buys) Shares at an aggregate premium (discount) to NAV or buys (sells) a Creation Unit-equivalent quantity of Basket instruments at an aggregate discount (premium) to their end-of-day values, and the net amount of Share premium (discount) plus Basket discount (premium) exceeds the transaction fee that applies to a purchase (redemption) of a Creation Unit.¹⁵

Different from conventionally traded ETFs, trading in Shares offers market makers a profit opportunity that is not based on the ability to arbitrage differences between share trading prices and underlying portfolio values or requiring the management of intraday market risk.¹⁶ To realize profits from market making in Shares, a market maker holding short (or long) positions in Shares accumulated intraday need only transact with the applicable NextShares Fund to purchase (redeem) a corresponding number of Creation Units of Shares, buy (sell) the equivalent quantities of Basket

¹⁵ The market maker profit equation is simplified for cash creations and redemptions. A market maker who purchases (or redeems) a Creation Unit in cash to offset its net intraday sales (purchases) of a Creation Unit quantity of Shares will earn profits to the extent that it sells (buys) Shares in the secondary market at an aggregate premium (discount) to NAV that exceeds the transaction fee that applies to a cash creation (redemption) of a Creation Unit.

¹⁶ In a typical ETF, intermediaries enter into arbitrage transactions to take advantage of deviations between market price and NAV, and that arbitrage is the mechanism that is understood to keep the market price and the NAV of ETFs aligned.

instruments at market-closing or better prices, and offload any remaining sub-Creation Unit Share inventory through secondary market transactions prior to the close.¹⁷

Because making markets in Shares will be simple to manage and low risk, competition among market makers seeking to earn reliable, low-risk profits should enable the NextShares Funds to routinely trade at tight bid-ask spreads and narrow premiums/discounts to NAV. Further, because the mechanism that underlies efficient trading of Shares does not involve arbitrage or trading in portfolio positions that are not included in the Basket, the need for daily portfolio holdings disclosure to achieve tight markets in Shares is eliminated.

The mechanisms supporting efficient trading of Shares are equally applicable across different asset classes and investment strategies. The NextShares Funds can hold relatively illiquid assets and still trade with tight bid-offer spreads and narrow premiums/discounts to NAV by creating and redeeming Shares in cash. Unlike for ETFs, portfolio holdings that are not included in a Basket will not influence how tightly the Shares will trade.

III. Relief Requested from Rules 15c1-5 and 15c1-6

Rule 15c1-5 requires a broker or dealer controlled by, controlling, or under common control with, the issuer of a security who induces the purchase or sale by a customer of a security,

¹⁷ Market makers in Shares are expected generally to seek to minimize their exposure to price risk by holding little or no overnight Share inventory. By establishing Creation Unit sizes that are somewhat smaller (i.e., in a range of 5,000 to 50,000 Shares) than is customary for ETFs, the NextShares Funds will support secondary market trading efficiency by facilitating tighter market maker inventory management because it facilitates closing out positions at the end of each trading day. To the extent that market makers hold small positions in Shares overnight, they are expected to aggregate such holdings with other risk positions and transact at or near the market close to buy or sell offsetting positions in appropriate, broad-based hedging instruments, such as S&P 500 and other index futures and ETFs. Such hedging of overnight inventory risk on a macro basis does not require disclosure of portfolio positions that are not included in the daily Basket.

to disclose the existence of such control before entering into a contract with or for such customer for the purchase or sale of such security. Rule 15c1-6 requires a broker or dealer to send a customer written notification of its participation in the primary or secondary distribution of any security in which it effects any transaction in or for such customer's account or induces the purchase or sale of such security by such customer.

The Trust believes that disclosure by a broker-dealer of a control relationship with the issuer of a portfolio security held by a NextShares Fund, or of a participation in the distribution of one of the Portfolio Positions, would impose an unnecessary and unjustifiable burden on broker-dealers engaging in creation and redemption transactions in Shares for their customers. There is no realistic potential for manipulating one of the Portfolio Positions' market price by means of transactions in Shares. Such a strategy would be both expensive and inefficient. Application of the Rules 15c1-5 and Rule 15c1-6 could adversely affect the attractiveness of the Shares to broker-dealers and thereby affect market liquidity and the utility of the Shares. The Trust, therefore, requests the Staff to grant exemptive, interpretive or no-action relief from application of the rules with respect to creations and redemptions of Shares.

IV. Conclusion

Based on the foregoing, we respectfully request that the Commission and the Staff grant the requested relief. The form of relief requested is substantially similar to those actions that the Commission and the Staff have taken in similar circumstances for other ETMFs and for ETFs. If the Commission or the Staff believes that a different format is appropriate, we would appreciate

the opportunity to revise this request for relief accordingly. Should you have any questions please call me at (202) 261-3464.

Sincerely,

A handwritten signature in blue ink, appearing to read "Adam T. Teufel". The signature is fluid and cursive, with the first name being the most prominent.

Adam T. Teufel

cc: Thomas Quinlan, Brandes Investment Partners, L.P.
Jon Rand, Dechert LLP