



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

May 2, 2018

**Response of the Office of Mergers and Acquisitions
Division of Corporation Finance**

Adam T. Teufel, Esq.
Dechert LLP
1900 K Street, NW
Washington, DC 20006

**Re: Brandes Investment Trust
Request for Exemptive Relief from Exchange Act Rule 14e-5**

Dear Mr. Teufel:

We are responding to your letter requesting exemptive relief dated May 2, 2018 and addressed to Ted Yu and Perry Hindin. To avoid having to recite or summarize the facts set forth in your letter, our response is attached to the enclosed copy of your correspondence. Unless otherwise noted, capitalized terms in this letter have the same meaning as in your May 2, 2018 correspondence.

On the basis of the representations made and the facts presented in your May 2, 2018 letter, the Division of Corporation Finance, acting for the Commission pursuant to delegated authority, by separate order is granting an exemption from Exchange Act Rule 14e-5.

This exemptive relief permits any Authorized Participant acting as a dealer-manager of a tender offer for a security in which the NextShares Fund invests to redeem Shares of the NextShares Fund in Creation Unit size aggregations for Redemption Instruments in the Basket that may include a subject security or related security as defined under Exchange Act Rule 14e-5(c). The exemptive relief also operates to permit such persons, described in your letter as "covered persons" within the meaning of Exchange Act Rule 14e-5(c)(3)(ii), to engage in secondary market transactions with respect to the Shares after the first public announcement of the tender offer and during such tender offer given that such transactions could include, or be deemed to include, purchases of, or arrangements to purchase, subject securities or related securities. In addition, the exemptive relief permits such covered persons to make purchases of, or arrangements to purchase, subject securities or related securities in the secondary market for the purpose of transferring such securities to purchase one or more Creation Units of Shares, under the circumstances described in your letter.

To the extent that either the Trust or the NextShares Fund constitutes a covered person within the meaning of Exchange Act Rule 14e-5(c)(3)(iv), each also may rely upon the exemptive relief granted herein. In granting this exemptive relief, we note in particular that our grant of relief is conditioned upon the following:

- no purchases of subject securities or related securities made by broker-dealers acting as dealer-managers of a tender offer would be effected for the purpose of facilitating a tender offer;
- any purchases of a portfolio security by a dealer-manager during a tender offer will be effected as adjustments to a basket of securities in the ordinary course of business as a result of a change in the composition of the NextShares Fund's portfolio; and
- except for the relief specifically granted herein, any broker-dealer acting as a dealer-manager of a tender offer will comply with Exchange Act Rule 14e-5.

The foregoing exemptive relief is based solely on the representations and the facts presented in your letter. The exemptive relief granted is strictly limited to the application of Exchange Act Rule 14e-5 to the transactions described in your letter. These transactions should be discontinued pending further consultations with the Commission staff if any of the facts or representations set forth in your letter change. In addition, this exemptive relief is subject to modification or revocation if at any time the Commission or the Division of Corporation Finance determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.

We also direct your attention to the anti-fraud and anti-manipulation provisions of the federal securities laws, including Exchange Act Sections 10(b) and 14(e) and Exchange Act Rules 10b-5 and 14e-3. The transactions and covered persons within the scope of this exemptive relief must comply with these and any other applicable provisions of the federal securities laws. The Division of Corporation Finance expresses no view on any other questions that may be raised by the transactions described in your letter, including, but not limited to, the

Adam T. Teufel, Esq.
Dechert LLP
May 2, 2018
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adequacy of disclosure concerning, and the applicability of any other federal or state laws to, such transactions.

Sincerely,

/s/ Ted Yu

Ted Yu
Chief, Office of Mergers and Acquisitions
Division of Corporation Finance

Enclosures

**UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION**

May 2, 2018

In the Matter of Brandes Value NextShares

**ORDER GRANTING EXEMPTION FROM
EXCHANGE ACT RULE 14E-5**

Brandes Investment Trust submitted a letter dated May 2, 2018 requesting that the Securities and Exchange Commission (“Commission”) grant an exemption from Exchange Act Rule 14e-5 for the transactions described in its letter (“Request”).

Based on the representations and the facts presented in the Request, and subject to the terms and conditions described in the letter from the Division of Corporation Finance dated May 2, 2018, it is ORDERED that the request for an exemption from Exchange Act Rule 14e-5 is hereby granted.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Brent J. Fields
Secretary

Action as set forth or recommended herein APPROVED
pursuant to authority delegated by the Commission under
Public Law 87-592.

For: Division of Corporation Finance

By: /s/ Ted Yu

Date: 05/2/2018

ADAM T. TEUFEL

adam.teufel@dechert.com
+1 202 261 3464 Direct
+1 202 261 3164 Fax

**Securities Exchange Act of 1934
Rule 14e-5**

May 2, 2018

Mr. Ted Yu, Chief
Mr. Perry Hindin, Special Counsel
Office of Mergers and Acquisitions
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2000

Re: Request for Exemptive Relief from Rule 14e-5 under the Securities
Exchange Act of 1934 for Brandes Investment Trust

Dear Messrs. Yu and Hindin:

Brandes Investment Trust (the “Trust”) is a Delaware statutory trust registered as an open-end management investment company under the Investment Company Act of 1940 (“1940 Act”). The Trust requests exemptive relief under the Securities Exchange Act of 1934 (the “Exchange Act”) on behalf of itself, the market participants discussed below, and its series, Brandes Value NextShares (the “NextShares Fund”)(together with the Trust and the market participants discussed below, the “Applicants”). The NextShares Fund operates as an exchange-traded managed fund (“ETMF”), as described below.¹

¹ The NextShares Fund commenced operations on February 14, 2018. To the best of the Applicants’ knowledge and belief, no transaction has occurred to date in connection with an Authorized Participant’s (defined below) purchase or redemption of the NextShares Fund’s Creation Units (defined below) in contravention of Rule 14e-5 under the Exchange Act.

The NextShares Fund continuously issues and redeems shares (“Shares”) in specified aggregations (each aggregation of Shares, a “Creation Unit”) at net asset value (“NAV”). The Trust has an effective registration statement filed on Form N-1A to register the Shares of the NextShares Fund, and the Shares are listed on a national securities exchange or national securities association (an “Exchange”) and are traded in the secondary market.² The trading price of Shares is directly linked to the NextShares Fund’s end-of-day NAV.³ In connection with this “NAV-Based Trading,” all bids, offers and execution prices are expressed as a market-determined premium or discount (*e.g.*, +\$0.01, -\$0.02) to that day’s NAV.⁴ 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 NextShares Fund’s NAV is computed. Because all transaction prices are based on an end-of-day NAV, the NextShares Fund does not need to disclose portfolio holdings on a daily basis in order to maintain a close relationship between Share trading prices and NAV.

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

³ Aspects of NAV-Based Trading are protected intellectual property described in one or more of U.S. Patent Nos. 7,444,300, 7,496,531, 7,689,501, 8,131,621, 8,306,901, 8,332,307 and 8,452,682 and in pending patent applications. The methodology for calculating NAV is fully disclosed in the prospectus. Additionally, any modification to the methodology used to calculate NAV will be fully disclosed to current and prospective investors prior to implementation.

⁴ Market data feeds underlying quotation and transaction systems may report bids, offers and execution prices in NAV-Based Trading with reference to a numeric base value (*e.g.*, 100), depending upon system parameters.

The Trust, on behalf of itself, the NextShares Fund, and Authorized Participants (as defined below) that act as dealer-managers of tender offers, as applicable, requests that the U.S. Securities and Exchange Commission (the “Commission” or the “SEC”) grant exemptive relief from Rule 14e-5 under the Exchange Act in connection with transactions that involve “subject securities” and “related securities” (as defined in Rule 14e-5(c)(6) and (7)) that are included in a “Basket,” as described below.

The SEC staff (“SEC Staff”) has previously issued relief substantially similar to that requested herein to other ETMFs listed and traded on an Exchange that meet certain conditions.⁵ In addition, the SEC 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.⁶ The Trust does not believe that the relief requested raises any significant new regulatory issues.

⁵ See Letter from Ted Yu to Eaton Vance Management regarding Eaton Vance ETMF Trust, dated February 26, 2016; Letter from Ted Yu to Ivy NextShares regarding Ivy NextShares, dated October 20, 2016; Letter from Ted Yu to Paul Hastings regarding Gabelli NextShares Trust, dated November 30, 2016; Letter from Ted Yu to Eaton Vance Management regarding Eaton Vance NextShares Trust II, dated November 15, 2017; Letter from Ted Yu to Stradley Ronon Stevens & Young LLP regarding Hartford Funds NextShares Trust, dated December 7, 2017; and Letter from Ted Yu to Calvert Research and Management regarding Calvert Management Series, dated January 11, 2018.

⁶ See, e.g., Letter from Ted Yu to Schiff Hardin LLP regarding WisdomTree U.S. Quality Shareholder Yield Fund, dated February 6, 2018.

I. The NextShares Fund

The Trust offers the following NextShares Fund that would be subject to the requested relief:⁷

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 Fund Operations

Sales and Redemptions of Creation Units

The NextShares Fund issues and redeems 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 Fund’s “principal underwriter” as defined in Section 2(a)(29) of the 1940 Act.⁸ Subject to certain exceptions described below, Creation Units of the NextShares Fund are purchased by making a deposit of the instruments specified by

⁷ The Trust operates the NextShares Fund pursuant to an exemptive order issued by the Commission under the 1940 Act. *See* Investment Company Act Rel. No. 32925 (November 28, 2017).

⁸ The number of Shares constituting a Creation Unit is set by the investment adviser to the Trust (“Adviser”). A Creation Unit consists of a specified number of Shares between 5,000 and 50,000 Shares. The Creation Unit size is somewhat smaller than customary for ETFs and should support secondary market trading efficiency by facilitating tighter market maker inventory management.

the NextShares Fund for making a purchase (“Deposit Instruments”), and shareholders redeeming Creation Units will receive a transfer of instruments specified by the NextShares Fund for meeting a redemption (“Redemption Instruments”).⁹ 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 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 Fund’s trading activities, the Trust anticipates that the Basket will normally not be a *pro rata* slice of the positions in the NextShares Fund’s portfolio (“Portfolio Positions”). Rather, instruments being acquired by the Adviser for the 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 the NextShares Fund and its shareholders, other Portfolio Positions may

⁹ Creation Units of Shares are redeemable at the next determined NAV of the NextShares Fund on each business day in accordance with the 1940 Act.

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 Fund 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 Fund may normally issue and redeem Creation Units in kind, the 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 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.

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.

Intraday Indicative Values

The Trust has arranged 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 the NextShares Fund’s Shares.¹⁰ IIVs are 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 Fund 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 the NextShares Fund, how many Shares should the investor buy?).¹²

Portfolio Holdings Disclosure

The NextShares Fund does not make its full Portfolio Positions available on a daily basis. Instead, the NextShares Fund will disclose its holdings only at periodic intervals, and with a lag. The NextShares Fund will disclose its holdings in full at least once quarterly,

¹⁰ Neither the Trust nor the NextShares Fund are involved in, or responsible for, the calculation or dissemination of any such IIV and 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 Fund do not provide pricing signals for market intermediaries or other buyers and sellers of Shares seeking to estimate the difference between the value of the 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 Fund is always fully transparent and does not depend on dissemination of IIVs.

¹² Because IIVs 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 Fund’s investors understand the risk that the value of their purchases and sales may differ from intended levels, the NextShares Fund’s 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.

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 Fund are 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 are purchased and sold in the secondary market at prices based on the next-determined NAV. All bids, offers and execution prices are 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 Fund's NAV is determined each business day, normally as of 4:00 p.m. Eastern Time. Trade executions are 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 are 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, the 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 Fund 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. The NextShares Fund has a unique identifier associated with its ticker symbol, which indicates 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 Fund 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 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 Fund's end-of-day NAV and the determination of final trade pricing. After the NextShares Fund's NAV is calculated and provided to the Exchange, the Exchange will price each Share trade entered into during the day at the 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

¹³ Due to systems limitations, the Consolidated Tape will report intraday execution prices and quotes for the NextShares Fund 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 Fund that are made available to the investing public follow the same display format.

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.

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 Fund's underlying value goes 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 number of Shares at the end of the day in transactions with the 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 NextShares Fund to purchase (redeem) a corresponding number of Creation Units of Shares, buy (sell) the equivalent quantities of Basket 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

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.

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 Fund 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.

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 Fund 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 Fund 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. Legal Analysis Under Rule 14e-5

Rule 14e-5 was originally promulgated as Rule 10b-13 under the Exchange Act to safeguard the interests of persons who sell their securities in response to a tender offer.¹⁸ Rule 14e-5 prohibits a “covered person” from directly or indirectly purchasing or arranging

¹⁸ Exchange Act Release No. 8712 (Oct. 8, 1969) (the “1969 Adopting Release”). In this regard, the 1969 Adopting Release noted that “[w]hen securities are purchased for a consideration greater than that of the tender offer price, this operates to the disadvantage of the security holders who have already deposited their securities and who are unable to withdraw them in order to obtain the advantage of possible resulting higher market prices.”

to purchase any equity securities that are the subject of a tender offer (“subject securities”) or any securities immediately convertible into, exchangeable for, or exercisable for subject securities (“related securities”) except as part of such tender offer. The term “covered person” includes, among others, a dealer-manager of a tender offer. The fact that most Authorized Participants are broker-dealers implicates Rule 14e-5 because the term “covered person” includes a dealer-manager of a tender offer. The term “covered person” also includes any person acting, directly or indirectly, in concert with other covered persons in connection with any purchase or arrangement to purchase any subject securities or any related securities. Therefore, the Trust also is seeking relief in the event it or the NextShares Fund may be deemed to be a “covered person” by virtue of the Participant Agreements pertaining to the Trust and the NextShares Fund.

In order to address situations in which an Authorized Participant acts as a dealer-manager of a tender offer, and a subject security or a related security is part of a group of securities that is received by the NextShares Fund when it issues a Creation Unit or part of a group of securities that the NextShares Fund distributes when it redeems a Creation Unit (*i.e.*, Deposit Instruments or Redemption Instruments in the Basket), the Trust respectfully requests that the Commission grant an exemption from Rule 14e-5 as it applies to such Authorized Participants. The exemption would permit any such Authorized Participant to execute transactions that include, or are deemed to include, purchases of, or arrangements to purchase, subject securities or related securities, but that are not effected for the purposes

of facilitating a tender offer and that are conducted in the ordinary course of business (in each case, from the time of the public announcement of the tender offer until the tender offer expires). In this regard, an Authorized Participant's ordinary course of business includes: (1) redeeming Shares of the NextShares Fund in Creation Unit size aggregations for Redemption Instruments in the Basket that may include a subject security or a related security; and (2) engaging in secondary market transactions in Shares. With respect to redemptions, the Trust notes that the acquisition of individual securities held by the NextShares Fund by means of redemptions of Shares would be impractical and extremely inefficient in view of the relatively small number of shares of any one security included in a Basket and the requirement that a minimum number of Shares (*i.e.*, a Creation Unit) be redeemed. Redemptions of and secondary market transactions in Shares under the circumstances described would not appear to result in the abuses at which Rule 14e-5 is directed.

In addition to the above request for relief, the Trust also is requesting exemptive relief in connection with purchases of Creation Units of Shares by an Authorized Participant acting as a dealer-manager of a tender offer. In this regard, in connection with purchasing Creation Units pursuant to the terms of its Participant Agreement, an Authorized Participant may seek to purchase in the secondary market securities comprising a Basket that includes, with respect to a tender offer for which it acts as a dealer-manager, subject securities or related securities. The Trust acknowledges that Rule 14e-5(b)(5)

provides an exception to its prohibition for purchases or arrangements to purchase a basket of securities containing a subject security or a related security if: (i) the purchase or arrangement is made in the ordinary course of business and not to facilitate the tender offer; (ii) the basket contains 20 or more securities; and (iii) covered securities and related securities do not comprise more than 5% of the value of the basket (the “Basket Exception”).

As indicated by the Commission in the release replacing former Rule 10b-13 with Rule 14e-5,¹⁹ transactions in baskets in accordance with the Basket Exception provide little opportunity for a covered person to facilitate an offer²⁰ or for a security holder to exact a premium from the offeror. Given that the purchases and redemptions of Creation Units of the NextShares Fund in general involve baskets of securities, Authorized Participants acting as dealer-managers of tender offers for relevant securities may, in certain cases, be able to rely on the Basket Exception in purchasing Creation Units of Shares. From time to time, however, a change in the composition of the portfolio securities of the NextShares Fund may result in a change in the basket that has been established for purposes of purchasing its Creation Units. As a consequence, the basket could contain less than 20

¹⁹ See Exchange Act Release No. 42055 (Oct. 22, 1999) (the “1999 Release”).

²⁰ As discussed in the 1999 Release, “facilitation of an offer” includes purchases intended to bid up the market price of the covered or related security, and includes buying a basket to strip out the covered security in an effort to get the offeror the number of shares it is seeking. In this regard, the Trust believes that it would be inefficient to facilitate a tender offer in a particular security by means of purchasing all of the securities in a Basket.

securities and/or covered securities and related securities could comprise more than 5% of the value of the basket. For example, a liquidation of the issuer of one of the securities or a merger involving the acquisition of the issuer of one of the securities could cause the number of securities in the basket to fall below 20 and/or could cause covered securities and related securities to comprise more than 5% of the value of the basket. Additionally, as a result of fluctuations in the market value of the securities held in the basket, covered securities and related securities could, at times, comprise more than 5% of the value of the basket. This composition would result in the unavailability of the Basket Exception for an Authorized Participant acting as a dealer-manager of a tender offer for the applicable securities and, in particular, may preclude an Authorized Participant from being able to rely on the Basket Exception.

In order to address situations (including but not limited to the foregoing examples) where the basket contains less than 20 securities and/or covered securities and related securities comprise more than 5% of the value of the basket, the Trust respectfully requests that the Commission provide an exemption under Rule 14e-5 if an Authorized Participant acting as a dealer-manager of a tender offer purchases or arranges to purchase subject securities or related securities in the secondary market for the purpose of transferring such securities to purchase one or more Creation Units of Shares, if such purchases are not effected for the purpose of facilitating such tender offer and are made in the ordinary course of business. Relief would be necessary in order to permit such Authorized Participants to

effect purchases of subject and related securities under such circumstances given that the Basket Exception would not be available. This extension of the Basket Exception would accommodate a potential factual circumstance associated with the operation of the NextShares Fund and would be consistent with the rationale underlying the adoption of the Basket Exception. The Trust notes, in particular, that purchases would not be effected for the purpose of facilitating a tender offer.

The Trust understands that, except as permitted by the relief from Rule 14e-5 requested herein, any Authorized Participant acting as a dealer-manager is required to comply with the requirements of Rule 14e-5.

Conclusion

Based on the foregoing, we respectfully request that the Commission and the SEC Staff grant the requested relief. The form of relief requested is substantially similar to those actions that the Commission and the SEC Staff have taken in similar circumstances for other ETMFs and for ETFs. If the Commission or the SEC Staff believes that a different format is appropriate (for example, a no-action position rather than an exemption), 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,



Adam T. Teufel

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