SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Non-Priority Customer License Surcharge


Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),1 and Rule 19b–4 thereunder,2 notice is hereby given that on June 12, 2017, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change described in Item II below, which Items have been prepared by the Exchange. The SEC is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to apply the Non-Priority Customer license surcharge set forth in Section I of the Schedule of Fees to orders that are routed to away markets.

The text of the proposed rule change is available on the Exchange’s Web site at www.isec.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Items III(a) and III(b) below, which statements may be examined at the Public Reference Room.

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

1. Purpose

The purpose of the proposed rule change is to apply the Non-Priority Customer (i.e., Market Maker,3 Non-Nasdaq GEMX Market Maker,4 Firm Proprietary5/Broker-Dealer,6 and Professional Customer7) license surcharge set forth in Section I of the Schedule of Fees to NDX8 orders that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan (the “Plan”). The Exchange initially filed the proposed pricing changes on June 1, 2017 (SR–GEMX–2017–22). On June 12, 2017, the Exchange withdrew that filing and submitted this filing.

Today, the Exchange charges Non-Priority Customers route-out fees for orders in Non-Penny Symbols9 that are routed to away markets in connection with the Plan. Specifically as set forth in Section II.A of the Schedule of Fees, Non-Priority Customer orders pay a route-out fee of $0.95 per contract in Non-Penny Symbols. The route-out fees offset costs incurred by the Exchange in connection with using unaffiliated broker-dealers to access other exchanges for linkages. As also set forth in Section I of the Schedule of Fees, the Exchange currently charges a $0.25 license surcharge for all Non-Priority Customer orders in NDX (“NDX Surcharge”). The NDX Surcharge currently applies to all NDX orders executed on the Exchange, but is not applied when those orders are routed to away markets in connection with the Plan. The Exchange therefore proposes to apply the NDX Surcharge to such orders by adding language in note 9 of Section I of the Schedule of Fees to state that the NDX Surcharge applies to all NDX executions, including executions of NDX orders that are routed to one or more exchanges in connection with the Plan. As such, all Non-Priority Customer orders in NDX that are routed to away markets would be assessed a $0.25 per contract NDX Surcharge and a $0.95 per contract route-out fee.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,10 in general, and further the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,11 in particular, that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”12 Likewise, in NetCoalition v. Securities and Exchange Commission13 (“NetCoalition”) the D.C. Circuit upheld

9 The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Rule 100(a)(25).
11 15 U.S.C. 78f(b)(4) and (5).
13 12 NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).
the Commission’s use of a market-based approach in evaluating the fairness of
market data fees against a challenge
claiming that Congress mandated a cost-
based approach.14 As the court
emphasized, the Commission “intended
in Regulation NMS that ‘market forces,
rather than regulatory requirements’
play a role in determining the market
data . . . to be made available to
investors and at what cost.”15

Further, “[n]o one disputes that
competition for order flow is ‘fierce.’
. . . As the SEC explained, ‘[i]n the U.S.
national market system, buyers and
sellers of securities, and the broker-
dealers that act as their order-routing
agents, have a wide range of choices
of where to route orders for execution’;
[and] ‘no exchange can afford to take its
market share percentages for granted’
because ‘no exchange possesses a
monopoly, regulatory or otherwise, in
the execution of order flow from broker
dealers’. . . .”16 Although the court and
the SEC were discussing the cash
equities markets, the Exchange believes
that these views apply with equal force
to the options markets.

The Exchange believes that its
proposal to apply the NDX Surcharge to
Non-Priority Customer orders in NDX
that are routed to away markets in
connection with the Plan is reasonable
and equitable because it offsets both the
costs associated with executing orders
on away markets as well as the licensing
costs associated with listing and trading
NDX. The Exchange’s route-out fees
are presently not calculated to cover the
licensing costs for NDX. The Exchange
notes that a license agreement is
required to trade NDX regardless of
whether the NDX order is executed on
the Exchange or routed to another
exchange in connection with the Plan.
As such, the Exchange believes that
extending the NDX Surcharge to NDX
orders routed to away markets (in
addition to those orders executed on the
Exchange) is a reasonable and equitable
means of recovering the costs of the
license. Furthermore, the Exchange
must pay the actual transaction fees
charged by the exchange the NDX order
is routed to, which includes the license
surcharge that such exchange assesses
for NDX orders. The Exchange’s route-
out fees are currently not calculated to
cover these license surcharges assessed
by other exchanges and therefore seeks to
recover these costs under this
proposal. For example, an NDX order
that is routed to the Chicago Board
Options Exchange (“CBOE”) in
connection with the Plan would be
assessed a $0.25 license surcharge by
CBOE on top of the actual transaction
fees CBOE would charge for the NDX
order.17 The Exchange’s route-out fees
are presently assessed as fixed fees,
unlike other exchanges, which, in
addition to a fixed route-out fee, assess the
actual transaction fees charged by
the exchange the order is routed to.18

The Exchange also believes that its
proposal is reasonable and equitable
because Non-Priority Customers would
be able to avoid paying the NDX
Surcharge by sending the Exchange
NDX orders to be routed to another
market and only pay the Exchange’s
route-out fee. The Exchange would,
however, still be required to pay all of
the actual transaction fees (including
the license surcharge) charged by the
exchange the order is routed to. For
example, a Non-Priority Customer order
in NDX that is routed to CBOE today
would only be assessed the $0.95 per
contract route-out fee while the
Exchange would pay the $0.25 per
contract license surcharge on top of the
actual transaction fees CBOE would
charge for the NDX order. The Exchange
therefore believes that it is reasonable
and equitable to assess the NDX
Surcharge to NDX orders that are routed
to other exchanges in order to avoid this
scenario.

Finally, the Exchange believes that
the proposed fee change is equitable and
not unfairly discriminatory because the
Exchange will apply the same fee to all
similarly situated members. In
particular, the NDX Surcharge would be
applied to all Non-Priority Customer
orders routed to away markets in
connection with the Plan. The Exchange
believes it is equitable and not unfairly
discriminatory to assess this surcharge
on all participants other than Priority
Customers because the Exchange seeks
to encourage Priority Customer order
flow and the liquidity such order flow
brings to the marketplace, which in turn
benefits all market participants.

B. Self-Regulatory Organization’s
Statement on Burden on Competition

The Exchange does not believe that
the proposed rule change will impose
any burden on competition not
necessary or appropriate in furtherance
of the purposes of the Act. The
Exchange notes that it operates in a
highly competitive market in which
market participants can readily favor
competing venues if they deem fee
levels to be excessive, or rebate
opportunities available at other venues
to be more favorable. In such an
environment, the Exchange must
continually adjust its fees to remain
competitive with other exchanges.
Because competitors are free
to modify their own fees in response,
and because market participants may
readily adjust their order routing
practices, the Exchange believes that
the degree to which fee changes in this
market may impose any burden on
competition is extremely limited.

In this instance, the proposed
application of the NDX Surcharge to
NDX orders that are routed to one or
more exchanges in connection with the
Plan does not impose a burden on
competition because the Exchange’s
execution services are completely
voluntary and subject to extensive
competition from other exchanges. If
the changes proposed herein are
unattractive to market participants, it is
likely that the Exchange will lose
market share as a result. Accordingly,
the Exchange does not believe that its
proposal will impair the ability of
members to maintain their competitive
standing in the financial markets.

C. Self-Regulatory Organization’s
Statement on Comments on the
Proposed Rule Change Received
From Members, Participants, or Others

No written comments were either
solicited or received.

III. Date of Effectiveness of the
Proposed Rule Change and Timing for
Commission Action

The foregoing rule change has become
effective pursuant to Section
19(b)(3)(A)(ii) of the Act,19 and Rule
19b–4(f)(2)20 thereunder. At any time
within 60 days of the filing of the
proposed rule change, the Commission
summarily may temporarily suspend
such rule change if it appears to the
Commission that such action is: (i)
Necessary or appropriate in the public
interest; (ii) for the protection of
investors; or (iii) otherwise in
furtherance of the purposes of the Act.
If the Commission takes such action, the
Commission shall institute proceedings
to determine whether the proposed rule
should be approved or disapproved.

14 See NetCoalition, at 534–535.
15 Id. at 537.
16 Id. at 539 (quoting Securities Exchange Act
Release No. 59039 (December 2, 2008), 73 FR
74770, 74782–63 (December 9, 2008) (SR–
NYSEArca–2006–21)).
17 See CBOE’s fee schedule, at: https://
www.cboe.com/publish/feeschedule/
CBOEFeeSchedule.pdf.
18 See, e.g., MIAX Options Fee Schedule, (1)
Transaction Fees, (c) Fees and Rebates for Customer
Orders Routed to Another Options Exchange, at:
https://www.miaxoptions.com/sites/default/files/
page-files/MIAX_Options_Fee_Schedule_05012017.pdf.
IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

**Electronic Comments**
- Use the Commission’s Internet comment form ([http://www.sec.gov/rules/sro.shtml](http://www.sec.gov/rules/sro.shtml)); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–GEMX–2017–25 on the subject line.

**Paper Comments**
- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2017–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site ([http://www.sec.gov/rules/sro.shtml](http://www.sec.gov/rules/sro.shtml)). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2017–25 and should be submitted on or before July 21, 2017.

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**SELECTIVE SERVICE SYSTEM**

**Privacy Act; System of Records**

**AGENCY:** Selective Service System.

**ACTION:** Notice of Amendment to Systems of Records.

**SUMMARY:** Selective Service System has amended an existing system of records subject to the Privacy Act of 1974. This action is necessary to meet the requirements of the Privacy Act to publish in the Federal Register notice of the existence and character of system of records maintained by the agency.

**DATES:** The changes became effective in 2012. The system has been operational for five years.

**FOR FURTHER INFORMATION CONTACT:***

**SUPPLEMENTARY INFORMATION:** This notice serves to update, amend, and consolidate the System of Records Notice for SSS–5 Reserve Force and National Guard Personnel Records; SSS–6 Uncompensated Personnel Records; and SSS–8 Pay Records published in the Federal Register September 20, 2011, Vol. 76, No 182.

**AUTHORITY OF MAINTENANCE OF THE SYSTEM:**

Chapter 49, Military Selective Service Act (50 U.S.C. 3801 et seq.)

**SYSTEM NAME:**
Integrated Mobilization Information Management System (IMIS) and Reserve and National Guard Personnel Records.

**SYSTEM LOCATION:**

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**
The Selective Service System is an independent agency of the United States government that maintains information on those potentially subject to military conscription. The statutory mission of the Selective Service is to be prepared to provide trained and untrained personnel to the DoD in the event of a national emergency and to be prepared to implement an alternative service program for registrants classified as conscientious objectors. These records are maintained at the National Headquarters Office in Arlington, VA.

The Selective Service System’s Integrated Mobilization Information Management System (IMIS) is an application created by the Agency to manage reserve force officers and resources assigned to the Agency, various budget allocations and expenditures, local area boards, state directors, and Agency material resources. The Agency developed IMIS to manage resources needed to facilitate mission readiness; resources consist of assigned personnel, material, and budget management.

**CATEGORIES OF RECORDS IN THE SYSTEM:**
The records contain information relating to selection, placement and utilization of military personnel assigned to SSS such as name, rank, Social Security account number, date of birth, physical profile, residence and business addresses, and telephone numbers.

**AUTHORITY OF MAINTENANCE OF THE SYSTEM:**

Chapter 49, Military Selective Service Act (50 U.S.C. 3801 et seq.)

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**
The purpose of these series of records is to provide information on Officers and Warrant Officers of the Reserves and National Guard currently assigned to the SSS. This system is used to verify payment information for reserve force officers assigned to the agency. Records includes full name of the individual, date of birth, selective service number (if available), mailing address, payment information, financial reports and reimbursements. Documents are scanned into this system for computer-based storage and shared with the National Business Center in Denver, Colorado. This system has some PII information unique solely to the system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**
Data is kept secure in accordance with the National Institutes of Standards and Technologies’ Special Publication 800–53 guidelines and the Federal Information Security Management Act of 2002.

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