

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81109; File No. SR-GEMX-2017-28]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Specify an Exception to the Manner in Which Market Maker Immediate-or-Cancel Orders Will Be Handled

July 10, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 27, 2017, Nasdaq GEMX, LLC (“GEMX” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission 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 amend GEMX Rule 715(b)(3) to specify an exception to the manner in which Immediate-or-Cancel Orders are handled by the System when entered through the Specialized Quote Feed<sup>3</sup> (“SQF”) protocol.

The text of the proposed rule change is available on the Exchange’s Web site at [www.ise.com](http://www.ise.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 places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

The Exchange is proposing to amend GEMX Rule 715(b)(3) to specify the manner in which an Immediate-or-Cancel Order interacts with certain order protections when entered through SQF. An Immediate-or-Cancel Order is defined as a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled.<sup>4</sup> SQF is an interface that was introduced with the technology migration to a Nasdaq, Inc. (“Nasdaq”) supported architecture.<sup>5</sup> Prior to the INET migration, Members entered orders through FIX, DTI or Nasdaq Precise on GEMX. Today, Members may continue to submit orders through FIX or Nasdaq Precise. OTTO became available to enter orders and SQF became available for Market Makers<sup>6</sup> to enter quotes and also Immediate-or-Cancel Orders. DTI was discontinued.

The Exchange proposes to amend GEMX Rule 715(b)(3) to clearly provide that, today, an Immediate-or-Cancel order entered by a Market Maker through SQF is not subject to the Limit Order Price Protection and Size Limitation Protection as defined in GEMX Rule 714(b)(2) and (3). All other Immediate-or-Cancel Orders entered through FIX, OTTO or Nasdaq Precise continue to be subject to these protections as was the case prior to the migration.

GEMX Rule 714, entitled “Automatic Execution of Orders,” contains a section (b)(2) and (3) which applies to order protections that are automatically enforced by the System. The Limit Order Price Protection sets a limit on the amount by which incoming limit orders to buy may be priced above the Exchange’s best offer and by which incoming limit orders to sell may be priced below the Exchange’s best bid.

<sup>4</sup> See GEMX Rule 715(b)(3). Immediate-or Cancel Orders do not route.

<sup>5</sup> See Securities Exchange Act Release No. 80011 (February 10, 2017), 82 FR 10927 (February 16, 2017) (SR-ISEGemini-2016-17). INET is the proprietary core technology utilized across Nasdaq’s global markets and utilized on The NASDAQ Options Market LLC (“NOM”), NASDAQ PHLX LLC (“Phlx”) and NASDAQ BX, Inc. (“BX”) (collectively, “Nasdaq Exchanges”). The migration of GEMX to the Nasdaq INET architecture resulted in higher performance, scalability, and more robust architecture. With the system migration, the Exchange adopted certain trading functionality currently utilized at Nasdaq Exchanges.

<sup>6</sup> The term “market makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See GEMX Rule 100(a)(25).

Limit orders that exceed the pricing limit are rejected.<sup>7</sup> Immediate-or-Cancel Orders entered through SQF are not subject to the Limit Order Price Protection provided in GEMX Rule 714(b)(2).

GEMX Rule 714(b)(3) provides a protection for size limitation. The System limits the number of contracts an incoming order may specify. Orders that exceed the maximum number of contracts are rejected.<sup>8</sup> Immediate-or-Cancel Orders entered through SQF are not subject to this size limitation protection provided in GEMX Rule 714(b)(3).

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

With the adoption of the SQF protocol on INET, the Exchange offered Market Makers the ability to expeditiously submit Immediate-or-Cancel orders through SQF, without having to involve a different protocol and method of entry such as FIX, OTTO or Nasdaq Precise. With the ability for Market Makers to utilize the SQF protocol to enter Immediate-or-Cancel Orders, in addition to having the ability to enter Immediate-or-Cancel Orders on FIX, OTTO or Nasdaq Precise, similar to other market participants, Market Makers are able to submit Immediate-or-Cancel Orders into SQF allowing them to manage risk utilizing a single protocol, SQF.

Unlike other market participants, Market Makers are required to provide liquidity to the market and are subject to certain obligations, including a requirement to provide continuous two-sided quotes on a daily basis.<sup>11</sup> Market Makers use Immediate-or-Cancel Orders to trade out of accumulated positions and manage their risk when providing liquidity on the Exchange. Proper risk management, including using these

<sup>7</sup> The limit is established by the Exchange from time-to-time for orders to buy (sell) as the greater of the Exchange’s best offer (bid) plus (minus): (i) An absolute amount not to exceed \$2.00, or (ii) a percentage of the Exchange’s best bid/offer not to exceed 10%. See GEMX Rule 714(b)(2).

<sup>8</sup> The maximum number of contracts, which shall not be less than 10,000, is established by the Exchange from time-to-time. See GEMX Rule 714(b)(3).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> See GEMX Rule 804(e).

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

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

<sup>3</sup> SQF is an interface that allows Market Makers to connect and send quotes, Immediate-or-Cancel Orders and auction responses into GEMX.

Immediate-or-Cancel Orders to offload risk, is vital for Market Makers, and allows them to maintain tight markets and meet their quoting and other obligations to the market. The Exchange believes that allowing Market Makers to submit Immediate-or-Cancel Orders though their preferred protocol will increase their efficiency in submitting such orders and thereby allow them to maintain quality markets to the benefit of all market participants that trade on the Exchange.

Miami International Securities Exchange LLC (“MIAX”) utilizes its MIAX Express Interface (MEI), a quoting interface, for market makers to enter immediate-or-cancel orders.<sup>12</sup> Specifically, MIAX noted in its Application for Registration as a National Securities Exchange, “. . . MIAX would allow market makers to use a variety of quote types, some of which would have a specific time in force and would be analogous to orders (MIAX refers to such order types as “eQuotes,” and market makers would be able to enter these orders through their quotation infrastructure).”<sup>13</sup> Furthermore, MIAX’s Price Protection on Non-Market Maker Orders is not available for orders submitted by a Market Maker.<sup>14</sup> The Price Protection on Non-Market Maker Orders prevents an order from being executed at a price beyond the price designated in the order’s price protection instructions, and is a similar protection to the Exchange’s Limit Order Price Protection. The Exchange similarly believes that it is consistent with the Act to not apply certain protections to Market Maker Immediate-or-Cancel Orders submitted through SQF.

Market Makers handle a large amount of risk when quoting on GEMX and in addition to the risk protections required by the Exchange, Market Makers utilize their own risk management parameters when entering orders, minimizing the likelihood of a Market Maker order resulting from an error from [sic] being entered. The Exchange believes that Market Makers, unlike other market participants, have the ability to manage

their risk when submitting Immediate-or-Cancel Orders through SQF and should be permitted to elect this method of order entry to obtain efficiency and speed of order entry, particularly in light of the continuous quoting obligations the Exchange imposes on these participants. If Market Makers desire the Limit Order Protections and the Size Limitation Protections, they may utilize the FIX, OTTO or Nasdaq Precise protocols for entering their orders. The Exchange notes that Market Makers on Phlx may enter Immediate-or-Cancel Orders through SQF and are similarly not subject to certain risk protections today.<sup>15</sup> The Exchange represents that it will continue to assess the risk protections that are applied to orders, including Market Maker Immediate-or-Cancel Orders submitted through SQF, to ensure that adequate risk protections are available to members that trade on the Exchange. The Exchange will file to adopt additional risk protections in the event that the Exchange determines that such additional protections are appropriate in the interest of maintaining a fair and orderly market.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Market Makers handle a large amount of risk when quoting on GEMX and in addition to the risk protections required by the Exchange, Market Makers utilize their own risk management parameters when entering orders, minimizing the likelihood of a Market Maker order resulting from an error being entered. Market Makers also transact a large amount of orders on the Exchange and bring liquidity to the market. Market Makers should be permitted to elect this method of order entry to obtain efficiency and speed of order entry, particularly in light of the continuous quoting obligations the Exchange imposes on these members that are not applicable to other market participants. The Exchange therefore believes that this rule change will not impose an undue burden on competition.

<sup>15</sup> See Securities and Exchange Release No. 76295 (October 29, 2015), 80 FR 68338 at 68339 (November 4, 2015) (SR-Phlx-2015-83) (Phlx noted in footnote 8 that while SQF permits the receipt of quotes, sweeps are not included for purposes of the Percentage Based risk protection in Rule 1095(i)). Phlx Rule 1080(c)(iii)(B) provides that, “. . . Market Sweeps are processed on an immediate-or-cancel basis, may not be routed, may be entered only at a single price, and may not trade through away 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has stated that it is requesting this waiver to specify that when Market Makers submit Immediate-or-Cancel Orders through SQF, the Limit Order Price Protection in GEMX Rule 714(b)(2) and the Size Limitation Protection in GEMX Rule 714(b)(3) do not apply to those orders. The Exchange believes that Market Makers should be permitted to elect this method of order entry to obtain efficiency and speed of order entry, due to the continuous quoting obligations the Exchange places on Market Makers, unlike other market participants. Additionally the Exchange believes that Market Makers have the ability to manage their own risk when submitting Immediate-or-Cancel Orders through SQF. The Exchange represents that it will continue to assess the risk protections that are applied to orders and will file to adopt additional risk protections if it determines that such additional protections are appropriate in the interest of maintaining a fair and orderly market.

<sup>12</sup> MIAX offers an eQuote, which is a quote with a specific time in force that does not automatically cancel and replace a previous Standard quote or eQuote. An eQuote can be cancelled by the Market Maker at any time, or can be replaced by another eQuote that contains specific instructions to cancel an existing eQuote. See MIAX Rule 517(a)(2).

<sup>13</sup> See Securities Exchange Act No. 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) (File No. 10-207) (In the Matter of the Application of Miami International Securities Exchange, LLC for Registration as a National Securities Exchange: Findings, Opinion, and Order of the Commission).

<sup>14</sup> See MIAX Rule 515(c)(1).

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

The Commission believes that waiver the 30-day operative delay is consistent with the protection of investors and the public interest because this waiver will enable the Exchange to permit Market Makers to utilize the SQF protocol to submit Immediate-or-Cancel Orders, thereby allowing Market Makers to manage their risk through a single protocol for entering orders and quotations and comply with their continuous quoting requirements. The Commission notes that Market Makers are sophisticated market participants that have alternative methods to manage risk and that the Exchange will continue to assess the need for additional risk protections that may be appropriate, including for Immediate-or-Cancel Orders submitted through SQF. For this reason, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.<sup>18</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>19</sup> of the Act to determine whether the proposed rule should be approved or disapproved.

#### 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>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-GEMX-2017-28 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-GEMX-2017-28. This file number should be included on the

<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>19</sup> 15 U.S.C. 78s(b)(2)(B).

subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-2017-28, and should be submitted on or before August 4, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81113; File No. SR-NYSEArca-2017-60]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change for a New NYSE Arca Rule 11.6900 and a New NYSE Arca Equities Rule 6.6900 To Establish the Procedures for Resolving Potential Disputes Related to CAT Fees Charged to Industry Members

July 10, 2017.

On May 16, 2017, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities

Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt NYSE Arca Rule 11.6900 and NYSE Arca Equities Rule 6.6900. The proposed rule change was published for comment in the **Federal Register** on June 1, 2017.<sup>3</sup> The Commission received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act<sup>4</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. The proposed rule change would establish the procedures for resolving potential disputes related to CAT Fees charged to Industry Members.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> designates August 30, 2017, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR-NYSEArca-2017-60).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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

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

<sup>3</sup> Securities Exchange Act Release No. 80781 (May 26, 2017), 82 FR 25369 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

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

<sup>6</sup> 17 CFR 200.30-3(a)(31).

<sup>20</sup> 17 CFR 200.30-3(a)(12).