

principles of trade, and, in general, to protect investors and the public interest. Specifically, the Commission finds that the proposed rule change is consistent with the Exchange Act for the reasons expressed in the Order Approving a Proposed Rule Change to Adopt FINRA Rule 2030—namely, that this proposed rule will discourage CABs, like non-CAB member firms, from engaging in pay-to-play practices that may create market distortions, impede a free and open market, and harm investors and the public interest.¹⁶

The Commission agrees with FINRA that the proposed rule change will clarify that CABs and non-CAB member firms are subject to the same rule regime as they engage in distribution or solicitation activities with government entities on behalf of investment advisers. Without the proposed rule change, under the SEC's Pay-to-Play Rule, CABs could not be retained by investment advisers to engage in distribution and solicitation activities with government entities on their behalf because the rule set for CABs does not expressly provide that FINRA Rule 2030 applies to CABs. The Commission also agrees with FINRA that having such rules in place will deter CABs from engaging in pay-to-play practices, and that clarifying the application of FINRA Rules 2030 and 4580 to CABs is a more effective regulatory response to concerns regarding third-party solicitations than an outright ban on such activity.

Lastly, the Commission agrees with FINRA that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. In the Notice, FINRA explained that the proposed rule change would subject CABs to the same pay-to-play rules as non-CAB member firms, and therefore, the economic impacts associated with the proposal were contemplated in the Economic Impact Assessment accompanying the filing of FINRA Rules 2030 and 4580. FINRA's Economic Impact Assessment in the Proposing Release for FINRA Rules 2030 and 4580 considered the impact on all FINRA member firms, including firms that at that time engaged solely in activities that were later deemed permissible for CABs.¹⁷

¹⁶ See Securities Exchange Act Release No. 78683 (August 25, 2016), 81 FR at 60063 (August 31, 2016).

¹⁷ See Securities Exchange Act Release No. 76767 (December 24, 2015), 80 FR 81650, 81656–81658 (December 30, 2015) (at the time of the Economic Impact Assessment, the SEC had not approved the separate set of rules for CABs).

Taking into consideration the foregoing, the Commission believes that the proposal is consistent with the Exchange Act. The Commission believes that the proposal will help protect investors and the public interest by, among other things, clarifying that CABs and non-CAB member firms are subject to the same rule regime as they engage in distribution or solicitation activities with government entities on behalf of investment advisers, and by deterring pay-to-play practices. Accordingly, the Commission believes that the approach proposed by FINRA is appropriate and designed to protect investors and the public interest, consistent with Section 15A(b)(6) of the Exchange Act and the rules and regulations thereunder.

V. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Exchange Act¹⁸ that the proposal (SR-FINRA-2017-027), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Eduardo A. Aleman

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81764; File No. SR-CHX-2017-13]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Sponsored Access

September 29, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4² thereunder, notice is hereby given that on September 15, 2017, the Chicago Stock Exchange, Inc. (“CHX” or the “Exchange”) filed with the Securities and Exchange Commission (“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.

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

CHX proposes to amend the Rules of the Exchange (“CHX Rules”) related to Sponsored Access. The text of this proposed rule change is available on the Exchange's Web site at (www.chx.com) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes 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 CHX 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 Statutory Basis for, the Proposed Rule Changes

1. Purpose

The Exchange proposes to amend CHX Rules to effect the following changes:

- Amend Article 1, Rule 1 to adopt the following defined terms: “Sponsoring Participant,” “Sponsored Person” and “Sponsored Access.”
- Amend Article 5, Rule 3 to permit Sponsoring Participants to provide Sponsored Access to the Exchange to Sponsored Persons, subject to enhanced requirements. Current Article 5, Rule 3 only permits Sponsoring Participants to provide authorized access to the Exchange's trading facilities to non-Participant³ broker-dealers. The proposal would permit Participants, non-Participants, broker-dealers and firms that are not broker-dealers to receive Sponsored Access to the Exchange.⁴

³ A “Participant” is a “member” of the Exchange for the purposes of the Act. See CHX Article 1, Rule 1(s).

⁴ The Exchange notes that Nasdaq Stock Market (“Nasdaq”) permits its members to provide Sponsored Access to a “Sponsored Participant,” which may be a non-broker-dealer, subject to the requirements of Nasdaq Rule 4615. According to Nasdaq, a “Sponsored Participant” may be a member, non-member, a broker-dealer or not a broker-dealer, such as “a hedge fund, mutual fund, bank or insurance company.” See Exchange Act Release No. 76449 (November 17, 2015), 80 FR 73011, 73012 (November 23, 2015) (SR-NASDAQ-2015-140).

(1) Current Article 5, Rule 3

Current Article 5, Rule 3(a) provides that a Sponsoring Participant may provide authorized access to the Exchange for a non-Participant broker-dealer, through a clearing arrangement or otherwise, only if the Sponsoring Participant, the non-Participant broker-dealer and the Exchange (as appropriate) enter into one or more written agreements, in a form acceptable to the Exchange, prior to any access to the Exchange, that contain all of the following terms: (1) All orders submitted by the non-Participant broker-dealer, and any executions resulting from those orders, are binding in all respects on the Sponsoring Participant; (2) the Sponsoring Participant is responsible for all actions taken and fees incurred in connection with any order submitted or transaction executed by the non-Participant broker-dealer (and any person acting on behalf of the non-Participant broker-dealer); (3) in all matters relating to the non-Participant broker-dealer's access to the Exchange and its use of Exchange facilities, the Exchange shall communicate with the Sponsoring Participant and shall not be required to communicate with the non-Participant broker-dealer at any time; (4) the non-Participant broker-dealer agrees that it will have reasonable procedures to maintain the physical security of the equipment used to access the Exchange to prevent improper use of, or access to, the Exchange; and (5) the Sponsoring Participant agrees that it will indemnify and hold the Exchange harmless from any liability, loss, claim or expense which the Exchange may incur in connection with the agreement. In addition, current Article 5, Rule 3(b) provides that the Sponsoring Participant must provide signed copies of the agreements required by section (a) to the Exchange prior to the non-participant's access to the Exchange through the Sponsoring Participant.

The Exchange now proposes to amend CHX Rules to permit Sponsoring Participants to provide Sponsored Access to the Exchange to any Sponsored Person, subject to the requirements of amended Article 5, Rule 3. Amended Article 5, Rule 3 is based, in part, on Nasdaq Rule 4615. The Exchange believes that the proposed rule change will permit a broader group of market participants, such as institutional investors, to obtain Sponsored Access to the Exchange, which may result in reduced transaction costs to such market participants in furtherance of the protection investors and the public interest.

(2) Proposed Definitions

Proposed CHX Article 1, Rule 1(vv) provides that "Sponsored Person" means a person which has entered into a sponsorship arrangement with a Sponsoring Participant pursuant to amended Article 5, Rule 3.

Proposed CHX Article 1, Rule 1(wv) provides that a "Sponsoring Participant" means a Participant who has been designated by a Sponsored Person to execute, clear and settle transactions resulting from the Trading Facilities. The rule continues by providing that the Sponsoring Participant shall be either (1) a Clearing Participant⁵ or (2) a correspondent firm with a clearing arrangement with a Clearing Participant.

Proposed Article 1, Rule 1(xx) provides that "Sponsored Access" means an arrangement whereby a Sponsoring Participant permits its Sponsored Persons to enter orders into the Matching System that bypass the Sponsoring Participant's trading system and are routed directly to the Exchange, including through a service bureau or other third party technology provider. The Exchange is proposing to adopt a definition for "Sponsored Access" to clarify the type of market access arrangement that is subject to amended Article 5, Rule 3. This definition was derived from the Commission's description of Sponsored Access used in the release approving the Market Access Rule.⁶

(3) Amended Article 5, Rule 3

The Exchange proposes to amend current Article 5, Rule 3 to permit Sponsoring Participants to provide Sponsored Access to Sponsored Persons, subject to the requirements of amended Article 5, Rule 3. Initially, the Exchange proposes to amend the title to

⁵ CHX Article 1, Rule 1(ee) defines "Clearing Participant" as "a Participant which has been admitted to membership in a Qualified Clearing Agency pursuant to the provisions of the Rules of the Qualified Clearing Agency." Current CHX Article 1, Rule 1(ff) defines "Qualified Clearing Agency" as "a clearing agency as defined in Section 3(a)(23) of the Exchange Act which is registered with the Commission pursuant to the provisions of Section 17A(b)(2) of the Exchange Act or has obtained from the Commission an exemption from registration granted specifically to allow the clearing agency to provide confirmation and affirmation services."

⁶ The Market Access Rule, among other things, requires broker-dealers providing others with access to an exchange or alternative trading system to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of providing such access. See Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010).

Rule 3 to reflect that it applies to "Sponsored Persons."

Under paragraph (a), the Exchange proposes to (1) replace a reference to "Participant (the 'Sponsoring Participant')" with "Sponsoring Participant"; (2) replace reference to "authorized access" with the proposed defined term "Sponsored Access"; (3) define the required written agreements between Sponsoring Participant, Sponsored Person and the Exchange that permit a Sponsored Person to receive Sponsored Access to the Exchange as "Sponsored Access Agreements." Under both paragraphs (a) and (b), as well as Article 5, Rule 4 (Denial of Access),⁷ the Exchange proposes to replace references to the terms "non-Participant broker-dealer" or "non-Participant" with "Sponsored Person."

The Exchange further proposes to adopt proposed paragraphs (a)(6)–(11) to provide additional terms that must be included in Sponsored Access Agreements. Proposed paragraph (a)(6) provides that the Sponsoring Participant and Sponsored Person must comply with Rule 15c3–5 under the Exchange Act.⁸ Pursuant to amended Article 5, Rule 3, the Sponsoring Participant is responsible for the activities of the Sponsored Person. Sponsoring Participants may have multiple Sponsored Access relationships in place at a given time. The Exchange's examination program assesses compliance with Article 5, Rule 3, among other rules. As such, proposed paragraph (a)(6) clarifies the Sponsoring Participant's and Sponsored Person's obligations to comply with the Market Access Rule, with which Participants are currently required to comply. The Exchange believes that specifying the obligation to comply with the Market Access Rule specifically will reinforce that amended Article 5, Rule 3 presupposes compliance with the Market Access Rule.

Proposed paragraph (a)(7) provides that the Sponsoring Participant shall comply with the Exchange's Certificate of Incorporation, Bylaws, Rules and procedures and the Sponsored Person shall comply with the Exchange's Certificate of Incorporation, Bylaws, Rules and procedures with regard to the

⁷ Incidentally, under current Article 5, Rule 4(a), the Exchange proposes to replace reference to "Market Regulation Department" with "Regulatory Operations Division." Since the Market Regulation Department is a department of the Regulatory Operations Division, the Exchange believes that it is appropriate for denial of access authority to rest more broadly with the Regulatory Operations Division.

⁸ 17 CFR 240.15c3–5.

Exchange, as if the Sponsored Person were a Participant. The Exchange believes that proposed paragraph (a)(7) will ensure that Sponsored Persons that are non-Participants are subject to the same regulatory requirements as Participants.

Proposed paragraphs (a)(8)–(11) would impose obligations on Sponsored Persons to ensure appropriate use of, and security of access to, the Exchange's trading facilities, as well as compliance with the applicable Sponsored Access Agreement. Specifically, proposed paragraph (a)(8) provides that the Sponsored Person shall maintain, keep current and provide to the Sponsoring Participant a list of individuals authorized to obtain Sponsored Access to the Exchange on behalf of the Sponsored Person. Proposed paragraph (a)(9) provides that the Sponsored Person shall familiarize its authorized individuals with all of the Sponsored Person's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to the Exchange pursuant to any Sponsored Access Agreement. Proposed paragraph (a)(10) provides that the Sponsored Person may not permit anyone other than authorized individuals to use or obtain access to the Exchange pursuant to any Sponsored Access Agreement. Proposed paragraph (a)(11) provides that the Sponsored Person shall establish, maintain and enforce written supervisory procedures and a supervisory system that is reasonably designed to ensure that the use or access to the Exchange that takes place pursuant to a Sponsored Access Agreement and by any Sponsored Person or authorized individual complies with the terms of the Sponsored Access Agreement and all applicable CHX and SEC rules and regulations.

(4) Operative Date

The Exchange proposes to make the proposed rule change operative on a date after the 30-day preoperative delay and pursuant to at least one week's notice to Participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,⁹ and furthers the objectives of Section 6(b)(5) in particular,¹⁰ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to

remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule change will remove impediments and perfect the mechanisms of a free and open market by permitting Sponsoring Participants to provide Sponsored Access to customers that are not broker-dealers, such as institutional investors, as well as broker-dealers that are not Participants, which may result in reduced transaction costs to such market participants in furtherance of the protection investors and the public interest.

Also, the Exchange believes that the additional required terms for Sponsored Access Agreements under proposed Article 5, Rule 3(a)(6)–(11) will protect investors and the public interest by enhancing the ability of the Exchange to monitor, enforce and compel compliance with CHX Rules and the Market Access Rule by Sponsoring Participants and Sponsored Persons. In particular, proposed paragraph (a)(6) will clarify that any Sponsored Access arrangement under amended Article 5, Rule 3 must be effected in accordance with the Market Access Rule; proposed paragraph (a)(7) will ensure that both Participant and non-Participant Sponsored Persons will be subject to the CHX Rules; and proposed paragraphs (a)(8)–(11) will impose affirmative obligations on Sponsored Persons that will enhance the security of the Exchange.

Moreover, the Exchange believes that proposed definitions of “Sponsoring Participant,” “Sponsored Person,” “Sponsored Access” and “Sponsored Access Agreements” provide clarity to the meaning and scope of amended Article 5, Rule 3, which furthers the objectives of Section 6(b)(1)¹¹ in that it further enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Participants and persons associated with its Participants, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The

Exchange notes that other national securities exchanges, such as Nasdaq,¹² currently permit its members to provide Sponsored Access to members, non-members, broker-dealers and firms that are not broker-dealers. As such, the proposal will enhance competition among the national securities exchanges by permitting the Exchange to allow Sponsoring Participants to provide Sponsored Access to its customers on similar terms.

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

No written comments were either solicited or received.

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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

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 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) of the Act¹⁵ 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

¹² See *supra* note 4.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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 the 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.

¹⁵ 15 U.S.C. 78s(b)(2)(B).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(1).

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. Please include File No. SR-CHX-2017-13 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 No. SR-CHX-2017-13. 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>). 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 changes 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 CHX. 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 No. SR-CHX-2017-13 and should be submitted on or before October 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81770; File No. SR-GEMX-2017-43]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 716(c) on the Block Order Mechanism

September 29, 2017.

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 September 18, 2017, Nasdaq GEMX, LLC ("GEMX" or "Exchange") filed with the Securities and Exchange Commission ("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 Rule 716(c) to more accurately describe the allocation methodology used in the Block Order Mechanism, and add language regarding how the block execution price is determined.

The text of the proposed rule change is available on the Exchange's Web site at 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Block Order Mechanism is a process by which a member can obtain

liquidity for the execution of block-sized orders,³ defined as orders for fifty contracts or more.⁴ When an order is entered in the Block Order Mechanism, that order is exposed to members who are given an opportunity to respond with the prices and sizes at which they would be willing to trade with the block-sized order.⁵ The exposure period is designated by the Exchange via circular, but must be no less than 100 milliseconds and no more than 1 second.⁶ At the conclusion of the exposure period, either an execution will occur at a single block execution price,⁷ or the order will be cancelled.⁸ The purpose of the proposed rule change is to amend Rule 716(c) to more accurately describe the allocation methodology used in the Block Order Mechanism, and add language regarding how the block execution price is determined. The Exchange believes that these changes will increase transparency around the operation of the Block Order Mechanism to the benefit of members and market participants.

Currently, Rule 716(c)(2)(ii) provides that Responses, quotes, and Professional Orders⁹ at the block execution price will participate in the execution of the block-size order according to Rule 713(e)—*i.e.*, the Exchange's regular allocation rule. As implemented today, however, interest that is executed in the Block Order Mechanism follows the customer priority pro-rata allocation methodology designed for the Exchange's auction mechanisms, including, for example, the Facilitation Mechanism,¹⁰ Solicited Order Mechanism,¹¹ and Price Improvement Mechanism,¹² with the exception that those two-sided auction mechanisms also allocate contracts against the contra order. This auction allocation methodology is similar to the Exchange's regular allocation methodology but does not provide enhanced allocations to the Primary Market Maker ("PMM") pursuant to

³ See Rule 716(c).

⁴ See Rule 716(a).

⁵ A "Response" is an electronic message that is sent by members in response to a broadcast message. See Rule 716(b).

⁶ See Supplementary Material .04 to Rule 716.

⁷ Responses and orders and quotes on the order book at the time the block order is executed that are priced better than the block execution price are executed at the block execution price. See Rule 716(c)(2)(i).

⁸ See Rule 716(c)(2).

⁹ The term "Professional Order" means an order that is for the account of a person or entity that is not a Priority Customer. See Rule 100(a)(37C).

¹⁰ See Rule 716(d).

¹¹ See Rule 716(e).

¹² See Rule 723.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁶ 17 CFR 200.30-3(a)(12).