

### 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 that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will apply in the same manner to all stop and stop-limit orders Trading Permit Holders submit to the Exchange and will help prevent potentially erroneous executions, which benefits all market participants. Because pursuant to the proposed rule change the System will reject stop and stop-limit orders it receives under certain conditions, the proposed rule change will only impact stop and stop-limit orders Trading Permit Holders submit to the Exchange, based on quotes on the Exchange, and thus will have no impact on intermarket competition.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)<sup>8</sup> of the Act and Rule 19b-4(f)(6)<sup>9</sup> thereunder. 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 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 Act and Rule 19b-4(f)(6) 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 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 to determine whether the proposed rule change 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-C2-2017-033 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-C2-2017-033. 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 website (<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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2017-033 and should be submitted on or before February 2, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Eduardo A. Aleman**,  
Assistant Secretary.

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### SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32965; File No. 812-14784]

#### Harbor Funds and Harbor Capital Advisors, Inc.

January 9, 2018.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of an application for an order pursuant to: (a) Section 6(c) of the Investment Company Act of 1940 ("Act") granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(j) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint arrangements and transactions. Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

**APPLICANTS:** Harbor Funds, a Delaware statutory trust registered under the Act as an open-end management series investment company, and Harbor Capital Advisors, Inc. (the "Adviser"), registered as an investment adviser under the Investment Advisers Act of 1940.

**FILING DATES:** The application was filed on June 13, 2017 and amended on November 15, 2017.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail.

Hearing requests should be received by the Commission by 5:30 p.m. on February 2, 2018 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0-5 under the Act,

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090; Applicants: 111 South Wacker Drive, 34th Floor, Chicago, IL 60606.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Senior Counsel, at (202) 551-6817, or David J. Marcinkus, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

### Summary of the Application

1. Applicants request an order that would permit the applicants to participate in an interfund lending facility where each Fund could lend money directly to and borrow money directly from other Funds to cover unanticipated cash shortfalls, such as unanticipated redemptions or trade fails.<sup>1</sup> The Funds will not borrow under the facility for leverage purposes and the loans' duration will be no more than 7 days.<sup>2</sup>

2. Applicants anticipate that the proposed facility would provide a borrowing Fund with a source of

<sup>1</sup> Applicants request that the order apply to the applicants and to any existing or future registered open-end management investment company or series thereof for which the Adviser or any successor thereto or an investment adviser controlling, controlled by, or under common control with the Adviser or any successor thereto serves as investment adviser (each a "Fund" and collectively the "Funds" and each such investment adviser an "Adviser"). For purposes of the requested order, "successor" is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of a business organization. Certain of the Funds are money market funds that comply with Rule 2a-7 of the 1940 Act (each a "Money Market Fund" and they are included in the term "Funds"). Although Money Market Funds are applying for the requested relief, they will not participate as borrowers because such Funds rarely need to borrow cash to meet redemptions. All Funds that currently intend to rely on the requested order have been named as Applicants and any other Fund that relies on the requested order in the future will comply with the terms and conditions of the Application.

<sup>2</sup> Any Fund, however, will be able to call a loan on one business day's notice.

liquidity at a rate lower than the bank borrowing rate at times when the cash position of the Fund is insufficient to meet temporary cash requirements. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or certain other short-term money market instruments. Thus, applicants assert that the facility would benefit both borrowing and lending Funds.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Among others, the Adviser, through a designated committee, would administer the facility as a disinterested fiduciary as part of its duties under the investment management agreements with each Fund and would receive no additional fee as compensation for its services in connection with the administration of the facility. The facility would be subject to oversight and certain approvals by the Funds' Board, including, among others, approval of the interest rate formula and of the method for allocating loans across Funds, as well as review of the process in place to evaluate the liquidity implications for the Funds. A Fund's aggregate outstanding interfund loans will not exceed 15% of its net assets, and the Fund's loans to any one Fund will not exceed 5% of the lending Fund's net assets.<sup>3</sup>

4. Applicants assert that the facility does not raise the concerns underlying section 12(d)(1) of the Act given that the Funds are part of the same group of investment companies and there will be no duplicative costs or fees to the Funds.<sup>4</sup> Applicants also assert that the proposed transactions do not raise the concerns underlying sections 17(a)(1), 17(a)(3), 17(d) and 21(b) of the Act as the Funds would not engage in lending transactions that unfairly benefit insiders or are detrimental to the Funds. Applicants state that the facility will offer both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and each Fund would have an equal opportunity to borrow and lend on equal terms based on an interest rate formula that is objective and verifiable. With respect to the relief from section 17(a)(2) of the Act, applicants note that any collateral

<sup>3</sup> Under certain circumstances, a borrowing Fund will be required to pledge collateral to secure the loan.

<sup>4</sup> Applicants state that the obligation to repay an interfund loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1) of the Act.

pledged to secure an interfund loan would be subject to the same conditions imposed by any other lender to a Fund that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or better conditions (in any other circumstance).<sup>5</sup>

5. Applicants also believe that the limited relief from section 18(f)(1) of the Act that is necessary to implement the facility (because the lending Funds are not banks) is appropriate in light of the conditions and safeguards described in the application and because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including combined interfund loans and bank borrowings, have at least 300% asset coverage.

6. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Rule 17d-1(b) under the Act provides that in passing upon an application filed under the rule, the Commission will consider whether the participation of the registered investment company in a joint enterprise, joint arrangement or profit sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

<sup>5</sup> Applicants state that any pledge of securities to secure an interfund loan could constitute a purchase of securities for purposes of section 17(a)(2) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82460; File No. SR-GEMX-2017-62]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Makers' Regulatory Fees

January 8, 2018.

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 December 26, 2017, Nasdaq GEMX, LLC ("GEMX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, 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 the Exchange's Schedule of Fees, as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 2, 2018.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaqgemx.cchwallstreet.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 purpose of the proposed rule change is to amend the Exchange's Schedule of Fees to (i) eliminate the annual regulatory fee currently assessed to Market Makers (*i.e.*, Primary Market Makers and Competitive Market Makers) at Section III.C and (ii) make a number of non-substantive clean-up changes to update the Table of Contents. Each change is discussed further below.

##### Eliminate Annual Regulatory Fee

GEMX currently charges its members various non-transaction fees to trade on the Exchange and use its facilities, including a tiered annual regulatory fee. This fee is assessed to all Primary Market Makers ("PMMs") and Competitive Market Makers ("CMMs") to help defray the regulatory and administrative costs associated with a member's use of the Exchange's facilities. In particular, the regulatory fee is \$1,000 per year for a PMM membership, and, for PMMs that are also CMMs, \$250 per year for each CMM membership. For CMMs that are not also PMMs the regulatory fee is \$500 per year for the first CMM membership, and \$250 per year for each additional CMM membership.<sup>3</sup> The Exchange does not charge a regulatory fee to Electronic Access Members ("EAMs").

The Exchange proposes to eliminate the annual regulatory fee and all related references from the Schedule of Fees because it has determined that this fee is outdated and no longer reflects the costs associated with supporting and regulating its members today. The annual regulatory fee was adopted in 2013, and has not been amended since that time.<sup>4</sup> And because GEMX charges its members various non-transaction fees outside of the annual regulatory fee to help defray such costs, as noted above, the Exchange believes that the proposed fee change will be a more accurate reflection of the administration and regulatory costs associated with a member's use of the Exchange today.

<sup>3</sup> See GEMX Schedule of Fees, Section III.C Regulatory Fees.

<sup>4</sup> See Securities Exchange Act Release No. 71149 (December 19, 2013), 78 FR 78447 (December 26, 2013) (SR-Topaz-2013-16).

##### Update Table of Contents

Currently, the Exchange's Schedule of Fees contains a number of section headings that are not currently reflected in the Table of Contents. The Exchange added, eliminated, or renamed these headings as part of a previously-approved rule change, and inadvertently did not make the corresponding updates to the Table of Contents.<sup>5</sup> Accordingly, the Exchange proposes to update the Table of Contents to make its Schedule of Fees easier to read.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</sup> in particular, in 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.

##### Eliminate Annual Regulatory Fee

The Exchange believes that the proposed elimination of the annual regulatory fee and all related references from the Schedule of Fees is reasonable because the Exchange has determined that the annual regulatory fee is outdated and no longer reflects the costs associated with supporting and regulating its members. This fee has not been amended since its adoption in 2013. Furthermore, GEMX charges its members various non-transaction fees outside of the annual regulatory fee to help defray such costs, as noted above. The Exchange therefore believes that the proposed fee change will be a more accurate reflection of the administration and regulatory costs associated with a member's use of the Exchange today.

The Exchange also believes that the proposed elimination of the annual regulatory fee is equitable and not unfairly discriminatory because the proposed change will apply equally to all similarly situated members.

##### Update Table of Contents

The Exchange believes that the clean-up changes to update the Table of Contents is reasonable, equitable and not unfairly discriminatory because these are non-substantive changes

<sup>5</sup> In particular, the Exchange renamed Section IV, deleted Section IV.C, and added Sections IV.F-IV.I as part of a previous rule change to amend GEMX's connectivity fees. See Securities Exchange Release No. 81902 (October 19, 2017), 82 FR 49453 (October 25, 2017) (SR-GEMX-2017-48).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

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

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